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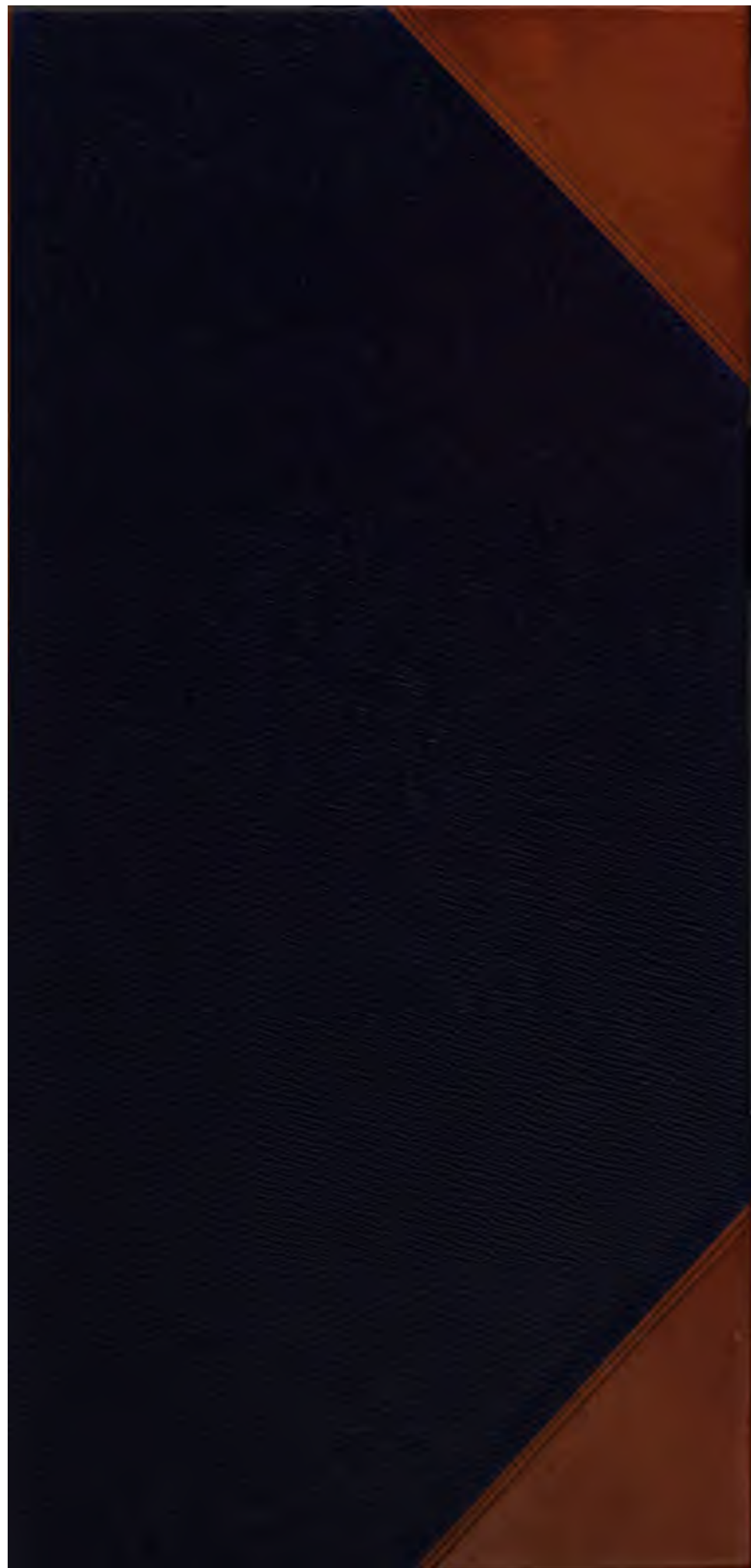
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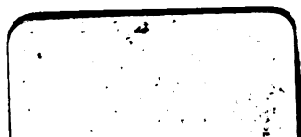


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A  
PRACTICAL VIEW  
OF THE  
**STATUTE LAW**  
OF  
**SCOTLAND,**  
FROM THE YEAR MCCCXXIV,  
TO THE  
CLOSE OF THE SESSION OF PARLIAMENT MDCCCXXVII,  
IN A SERIES OF TITLES, ALPHABETICALLY ARRANGED.

BY  
**JAMES WATSON, Esq. ADVOCATE,**  
AUTHOR OF A TREATISE ON THE LAW OF SUCCESSION  
IN SCOTLAND.

---

IN TWO VOLUMES.

---

VOL. I.

EDINBURGH:  
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AND THOMAS M. SHIELLS.

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1828.



TO  
THE RIGHT HONOURABLE  
**CHARLES HOPE,**  
LORD PRESIDENT OF THE COURT OF SESSION  
IN SCOTLAND,  
THIS WORK  
IS, WITH HIS LORDSHIP'S PERMISSION,  
MOST RESPECTFULLY  
DEDICATED.



## PREFACE.

---

**THE** design of the following Work is to illustrate those branches of the Law of Scotland that depend on Statute. Although chiefly intended as a book of reference for students and practitioners of law, the subject is important also to the historian, and to all who hold situations of judicial authority in Scotland.

Almost every branch of the law of Scotland is affected by the Statutes. These statutes comprehend the acts of the Scottish Parliament which passed in the reign of James I. of Scotland, and from thence downwards to the union of the two kingdoms in 1707 ; and such of the British Statutes, enacted since the union, as concern this part of the united kingdom.

To become acquainted with statute law, however, is an attainment by no means unattended



with difficulties. These arise, in some instances, from the obscure or ambiguous phraseology of some of the statutes ; while it is frequently difficult to distinguish, with precision, acts repealed or which have gone into désuetude, from those in force. Even prior to the union, the statutes were published in a chronological order, without reference to the several departments of law which they were intended to fix or explain ; and, since that period, the labour of making this selection from the statutes of the united kingdom has much increased.

The plan of the present work is not entirely new : it has been suggested by Lord Kames' Abridgment, which has long enjoyed the approbation of the public. It is intended to present an alphabetical arrangement of the Scottish Statutes prior to the Union ; and a selection from the British Statutes, from the Union to the close of the last Session of Parliament 1827, of all those which seem to apply to Scotland. All statutes possessing a temporary or local interest only, and all those which relate to the public

revenue or expenditure, have been excluded. The laws of excise have been digested in a practical form by Mr Huie of that department ; and those of the customs have been compiled, by direction of his Majesty's Treasury, by Mr Hume, comptroller of customs in the port of London.

In the hope of extending the practical convenience of Lord Kames' and Lord Swinton's works, I have enlarged the range of illustration under the present plan, which is meant to constitute a *Dictionary*, rather than an *Abridgment* of the statutes. The early acts, and such as have been repealed or amended, are narrated in the introductory remarks prefixed to each title: the enacting clauses of those statutes by which practice is now regulated are given in detail: acts repealed are distinguished from those in force ; and to each title are subjoined, notices of acts of sederunt of the Court of Session, references to the opinions of institutional writers, and to the leading decisions of the Supreme Court, which explain or illustrate the application of the statutes.

A Supplement will be published occasionally, to shew any new enactments applicable to Scotland ; and all acts of sederunt, or decisions proceeding upon these or prior statutes.

J. W.

DUBLIN STREET, }  
25th March 1828. }

# CONTENTS

## OF

### VOLUME FIRST.

---

	Page.
<b>Act of Parliament, ...</b>	1
<b>Adjudication, .....</b>	ib.
<b>Admiral, .....</b>	18
<b>Adultery, .....</b>	26
<b>Advocate, .....</b>	30
<b>Advocation, .....</b>	31
<b>Aliens, .....</b>	33
<b>Aliment of Poor Prisoners, .....</b>	41
<b>Ann or Annat, .....</b>	44
<b>Annualrent, .....</b>	46
<b>Apparent Heirs, .....</b>	50
<b>Appeal, .....</b>	56
<b>Arrestment, .....</b>	63
<b>Artificers, .....</b>	68
 <b>Bank-Notes, .....</b>	 78
<b>Bankrupt, .....</b>	99
<b>Battery pendente lite, ..</b>	163
<b>Bigamy, .....</b>	ib.
<b>Bills of Exchange and Promissory-Notes, .....</b>	164
<b>Bonds, Heritable and Moveable, .....</b>	171
<b>Brieves, .....</b>	173

	Page.
Burgh-Royal, .....	177
Constitution and Government, .....	178
Election, .....	182
Common Good, .....	191
Weights and Measures, .....	201
Taxation, Watching and Warding, .....	214
Roads, .....	217
Trade and Exclusive Privilege, .....	219
Prisons, .....	234
Convention of Royal Burghs, .....	247
Ruinous Houses, .....	249
Arresting Strangers, .....	251
Seisins in Burgh, .....	253
Confirmation of Privileges, .....	ib.
<i>Cassio Bonorum.</i> See Bankrupt.	
Child-Murder, .....	257
Colliers, .....	259
Combination of Workmen. See Artificers.	
Commissary. See Sheriff.	
Commony, .....	265
Compensation, .....	268
Copy-Right, .....	269
Court of Session, .....	280
Commission of Teinds, .....	341
Cruives and Zairs. See Fishery.	
Curators, .....	372
Death, .....	381
Deathbed, .....	383
Declinature of Judges, .....	387
Divorce for Desertion, .....	390
Dovecotes, .....	391
Duel, .....	392
Ejections, .....	ib.

# CONTENTS.

xiii

	Page.
Election of Magistrates. See Burgh-Royal.	
Election of Members of Parliament. See Parliament.	
Entails, .....	393
Episcopals, .....	420
Exchequer, .....	439
Execution of Summons, .....	453
Executors, .....	458
Executor-Creditor, .....	462
Expenses of Process, .....	464
Fishery, .....	466
Whale and Herring Fishery, &c. ....	ib.
Salmon Fishery, .....	480
Forests, .....	491
Friendly Societies, .....	493
Forgery. See Bank-Notes and Bills of Exchange.	
Freehold Qualification. See Parliament.	
Game, .....	512
Legal Qualification, .....	515
Limitation as to the Season, .....	ib.
Muirburn, .....	521
Destruction of Game by night, .....	ib.
Game Certificates, .....	525
Glebe, .....	526
Highlands, .....	539
Highways, Bridges, and Ferries, .....	542
Turnpike Roads, .....	563
Starr or Bent, .....	566
Incorporations, .....	568



## ACT OF PARLIAMENT.

By 33. of Geo. III. cap. 13, it is declared, that every act of Parliament passed subsequent to 8. April 1793, shall be indorsed in English by the clerk of Parliament with the day, month, and year, when the same shall have passed and received the royal assent ; and such indorsation shall be the date of its commencement, unless another term of commencement shall therein be provided.

This point was disputed in the case, *Anderson v. Wardrope*, 21. November 1772, *Morrison*, p. 14771.

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## ADJUDICATION.

Adjudication is that heritable interest which a creditor establishes to himself by taking his debtor's lands as a judicial pledge, or in execution, for the payment of his debt. In this manner, to secure justice to the creditor, without unnecessary hardship to the debtor, has been the object of the legislature upon many occasions.

The original form of this diligence was that of *apprising* or *comprising*, a proceeding conducted by the Sheriff. The earlier acts of Parliament refer to this now obsolete form. It will be sufficient, therefore, to state the substance of their various provisions. The

A



later statutes applicable to the form of adjudication, which has been substituted for comprising, shall be quoted entire.

The act 1469, *cap.* 37, provides, that where no moveables can be recovered by the brieve of distress, the Sheriff may sell the debtor's land : But, in this event, the lands may be redeemed by the debtor any time within seven years. If the Sheriff cannot find a purchaser, he may apprise and value the debtor's land by thirteen neutral men, and assign as much to the creditor as will cover the amount of his debt. And the superior shall receive the creditor, or any other purchaser, for payment of a year's rent, or shall take the land to himself and undergo the debt.

The act 1621, *cap.* 6, was originally intended to regulate the diligence of apprising ; but, as its provisions are still applicable to adjudications, it will be proper to quote it entire.

Our Sovereigne Lord, and Estates of Parliament, considering that his Majesties lieges are greatly damnified, and prejudged, by the abuse and evil custome, which heretofore hath been observed in comprising, whereby lordships, baronies, and other great portions of landes are comprised for small summes of money, and thereby the compriser hath right to the mailes, duties, and profites of the landes, notwithstanding that they farre exceede the profite of that summe of money for the which the saids landes are comprised. For remeede whereof, it is statuted and ordained, that the compriser shall have no further right to the mailes, fermes, and duties of the comprised landes, by vertue of the comprising led at his instance, during the yeares and space that the same is redeemable, but onely to such part and quantitie thereof, as will corresponde to the annuelrent of the

summe, at ten for the hundreth, for the which comprising is led. With this provision alwayes, and expresse declaration, that if the mailes and duties of comprised landes exceede the proportion of the annuelrent of the foresaids summes for the which the comprising is deduced, and that the compriser please to intromet therewith; and according thereunto, that he have intromission with the same; in that case, his foresaid further intromission, which shall extend to any greater quantitie than will justly satisfie him of the foresaid annuelrent, shall be ascribed in payment and satisfaction of his principal summes, (*pro tanto*).

Likeas the Estates findes and declares, That the same further intromission shall bee ascribed in that payment of the said principal summe, so that if it shall happen, that the quantitie of the mailes and duties to be intromitted with by the compriser, to extend unto as much as will satisfie the whole principal summes, with the ordinarie annuelrent thereof, according to ten for each hundreth, and the expenses bestowed by the compriser, in passing, and obtaining infestment of the superiour, of whom the landes are holden, together with the annuelrent of the said summes, so given by the compriser to the superiour, for entring of him to the comprised lands, and the necessarie expenses and charges waired and bestowed by the said compriser, in leading and deducing the said comprising; in that case, thereafter, the comprising to expyre (*ipso facto*), and to cease in all times following.

And if that the person against whom comprising is led, be minor, and of lesser age, it is statuted and ordained, That it shall be lawful to him at any time within his perfect age of twentie-five yeares compleate, to redeeme the saids comprised landes, by payment of the summes, for the which the said comprising was led, and of the lawful annuelrentes thereof, according to ten for each hundreth; together with the expenses bestowed in passing and obtaining of the infestment from the superiour, and ordinarie annuelrent of the

same ; together also, with the necessarie expenses bestowed in leading and deducing of the said comprising, as is above-written. And that, notwithstanding of the preceeding lawes, and practique of this kingdome, by the which the legal reversion of comprised landes, expired within seaven yeares after the leading of the comprising, from the which his Majestie and Estates hath, by this present act and statute, excepted minors, in all times comming, declaring the same nowayes to run against them. But it is declared, that if a minor redeeme not landes comprised, (the right of reversion whereof is competent in his person), within seaven yeares after the leading of the said comprising, but according to the benefite granted unto him by this present act, suffer the comprysed landes to remaine unredeemed with the compriser, during all the yeares of his minoritie, and lesse age ; then, and in that case, the compriser shall have good right to meddle, and intromet with the whole mailes and duties of the comprised landes of all these yeares subsequent, after the expyryng of the saids seaven yeares, and interveening betwixt them, and the saids yeares of his majoritie, and perfect age of twentie-five yeares compleate ; notwithstanding that the duties of the landes extende to more than will answer to the annuelrent of the money, for the which the land is comprised. And if it shall happen a minor, having right to redeeme comprised landes, as said is, to deceasse before he be of perfect age of twentie-five yeares, and that another minor bee heire, or succede unto him in his right of reversion, and title, competent to him, for the redemption of the saids comprised landes, that minor so succeeding in the rights, shall have the same libèrtie and priviledge above-written, for redemption of the saids landes, sicklike, and in the same manner, as if they had been comprised from himsele, wherein he shall nowayes be prejudged by the yeares which ran after the comprising, in the lifetime of that person minor in whose right he succeedeth, but that he may

sicklike lawfully redeeme the same at any time before his majoritie, as said is.

And it is declared, That in case any minor, having the right of the said reversion competent unto him, shall happen to decease after the expyryng of seaven yeares outrun, after the said comprysing, and that a person of perfect yeares succeed to the said minor, in the right of his reversion aforesaid; in that case the said person major so succeeding, shall be holden and astricted to redeeme the saids comprised landes, within the space of year and day after the deceasse of the said minor, in whose right he succeedeth. Otherwayes, the said redemption not being used by him within that space, he shall bee perpetually seclused from all benefite, which hee may claime by the reversion and succession thereunto foresaid, and all power of redemption of the saids landes, by vertue thereof. But if at the time of the minor's deceasse, all the saids seaven yeares were not expyred, it shall be lawfull for his said successor, (being major,) to redeeme, within the space of so many of the saids seaven yeares, as were not outrun the time of the minor's deceasse, such like as if the saids landes had been comprised from the said minor himselfe; which time being expyred, and hee doing no diligence, hee shall bee excluded from the benefite of his reversion.

And it is specially provided, That in all the abovewritten cases, if the comprised landes bee not worth such yearly quantitie of maile and dutie, as will proportionally effeire to the annualrent of the said money, at ten for every hundreth, for the which comprising is led, or being worth, that the same is exhausted by other lawful deeds, which may render the same unprofitable to the compriser, and unanswerable to the annuelrent of the summes, for the which he hath comprised, either in whole, or in part; then, and in that case, the redeemer, (whether he be major or minor,) shall be holden, before hee can redeeme or out-quite the saids landes from the compriser, to re-found and pay to him the full an-

nuelrent and profite of the summes, for the which the landes were comprised, so farre as he wanteth and inlacketh, by the benefite of his said comprising. And if the rent of the land so comprised consist in victual, the estimation and consideration thereof shall be had according to the common prices of victual in those shyres where the comprised landes lye, according as the same giveth betuixt Zuile and Candlemesse. And the saids Estates declares, That this above-written statute shall noways extend, nor be prejudicial to comprisings, which are already prescribed before the date of this present act.

The act 1621, *cap.* 7, provides for the case of a party renouncing to be heir, and who therefore cannot be charged to enter. It enables a second adjudger to redeem from the first, and so on to the third, fourth, and all posterior adjudgers; and this privilege is extended to each for the space of seven years *respectively*. But it is allowed under this condition, that after a second adjudger has redeemed from the first, the third adjudger redeeming from him must not only pay the expense of leading the first adjudication, including the expense of infeftment, but the expenses of the second adjudication also.

The act 1621, *cap.* 8, "Anent the Extract of infeftments past upon comprisings furth of the Privy Seal, "where the same are not registrated at the Great Seal," refers to lands holding of the crown, and is intended to prevent a compriser losing the benefit of his diligence by neglecting to record the infeftment at the Great Seal, after passing the Privy Seal; and thereby affording the debtor or others an opportunity of fraudulently "abstracting and destroying the principal right and

“confirmation,” before passing the Great Seal. The act dispenses with this last record as necessary to complete the title of the lands comprised, “providing always, that this present act shall noways hurt nor prejudice any third person who hath infestment or confirmation of the said comprised lands past the Great Seal of an anterior date to the said infestment so past the Great Seal in manner aforesaid, but shall be only of force and effect against that person from whom the lands are comprised, his heirs and successors.”

The act 1661, *cap.* 31, abolishes the old custom of registering all comprisings at full length; but enacts that, in lieu thereof, an abbreviate shall be recorded, within sixty days from its date: “with certification, if they be not allowed and recorded within the said space, any other comprising, though posterior in date, yet if it be allowed and recorded before the prior comprising, the same shall have preference according to the date of the allowance and record; but prejudice always to any further diligence by infestments or charges against the superior, according to the priority or posteriority thereof *prout de jure*.” And, by the 1. and 2. of Geo. IV. *cap.* 38. § 17, this abbreviate must be signed by the extractor, and registered within sixty days from its date. See title “*Registration*.”

The act 1661, *cap.* 62, “For ordering the payment of debts betwixt creditor and debtor,” seems to have been intended, partly as a temporary measure to relieve the country from the commercial difficulty in which it was at that time involved, and partly as a permanent plan for accomplishing the object announced by its title.

That part of it which relates to adjudications generally may be quoted entire.

And whereas the legal reversion of comprisings was formerly limited to seven years, his Majesty, for the reasons, and with consent foresaid, is graciously pleased to extend the same to ten years in all time coming, and statutes and ordains, that all comprisings already deduced, and whereof the legal reversion is not yet expyred, or which shall be deduced any time hereafter, shall be redeemable within the space of ten yeares after the date of the same; and all comprisings deduced since January one thousand six hundred and fifty-two years, and whereof the legals are expired, and all comprisings deduced before the said moneth of January one thousand six hundred and fifty-two years, and which were not expired before the said moneth of January one thousand six hundred and fifty-two years, shall be redeemable within the space of three years after Whitsunday now last bypast, notwithstanding the legal reversions of the same be now expired.

And in case the lands and others comprised exceed in yearly rent and value the annuelrent of the sums contained in the saids comprisings, and of the expence disbursed in obtaining infestments thereupon, and the debtor shall desire the creditor to possess the lands and others comprised, it shall be lawful to the Lords of Session, likeas the saids Lords are hereby impowered and authorized, upon a supplication to be made to them by the debtor, and citation of the comprisers, to appoint the apprisers to possess such of the saids lands and others, during the legal reversion, as the saids Lords of Session shall think just and reasonable; the saids debtors alwayes giving possession to those who have right to the saids comprisings, and ratifying their possession already apprehended by them, (if any such possession they have,) of such of the saids lands and others, as the saids Lords of the Session appoint, not being beneath in yearly

rent and value of the annuallrents above mentioned, or other-  
wayes giving to the creditors (whether they have possession  
or not,) sufficient security, at the sight of the saids Lords,  
for payment of the saids annuallrents, during the time fore-  
said : The saids Lords of Session having alwayes power to  
determine, whether in the cases foresaids the debtor shall  
give surety to the creditor for his annuallrents, or the de-  
bitor not being able to give surety, the creditor shall be ob-  
liged to take possession of the debtor's lands. And if the  
Lords of Session shall appoint, in the case foresaid, the cre-  
ditor to be possest for his annuallrent ; then, and in that  
case, the debtor shall be holden to deliver the evidents of  
the saids lands to the creditor, or transumps thereof ; pro-  
viding alwayes, that the creditor's right, by vertue of the saids  
comprisings, be nowayes prejudged after the expiring of the  
same, and that the whole lands and others, both such as  
shall be possessed by the debtor, and the remanent of the  
lands and others contained in the saids comprisings, shall  
pertain to the creditor irredeemably.

And because oftentimes creditors, in regard they live at  
distance, or upon other occasions are prejudged and pre-  
veened by the more timeous diligence of other creditors, so  
that before they can know the condition of the common de-  
bitor, his estate is comprised, and the posterior comprisers  
have only right to the legal reversion, which may, and doth  
often prove ineffectual to them, not being able to satisfie and  
redeem the prior comprisings, (their means and money being  
in the hands of the common debtor) : Therefore it is sta-  
tute and ordained, that all comprisings deduced since the  
first day of January one thousand six hundred and fifty-two  
years, before the first effectual comprising, or after, but with-  
in year and day of the same, shall come in *pari passu* toge-  
ther, as if one comprising had been deduced and obtained  
for the whole respective sums contained in the foresaids com-  
prisings : And it is declared, that such comprisings as are  
preferable to all others in respect of the first real right and



infestment following thereupon, or the first exact diligence for obtaining the same, are and shall be holden the first effectual comprising, though there be others in date before and anterior to the same; and the foresaid benefit given and introduced hereby, in favours of those whose comprisings are led within the time, and in manner foresaid, is only granted and competent in the case of comprisings led since the first day of January one thousand six hundred and fifty-two years, and to be led after the date of thir presents, and for personal debt only, without prejudice alwayes of ground-annuals, annualrents due upon infestment, and other real debts, and *debita fundi*, and of comprisings therefor of lands and others affected therewith, which shall be effectual and preferable according to the laws and practick of this kingdom now standing. And it is also provided, that the creditors having right to the first comprising, except as is above excepted, shall be satisfied by the posterior comprisingers, claiming the benefit foresaid, of the whole expence disbursed by them, in deducing and expeding the said first comprising and infestments thereupon.

And further, for obviating the frequent and fraudulent practice of the appearand heirs of debtors, who are in use to acquire the right of expired comprisings, and by vertue thereof, to enjoy and possess their predecessor's lands and estate, to the prejudice and defrauding of the posterior comprisings and other creditors: It is statute, that in case the appearand heir of any debtor, or any other confident person to his behoof, shall at any time hereafter acquire the right of an expired comprising already deduced, or which shall be led and deduced hereafter, the said right shall be redeemable from the appearand heir, or the said confident person, their heirs and successors, within the space of ten years after the acquiring of the said right, by the posterior comprisingers, upon payment allanerly of the sums truly paid and given out, for buying and acquiring the saids rights, at the least so much thereof as shall be resting unsatisfied, for the same,

by the intromission of the appearand heir, or of the said confident person, or their foresaids.

And his Majesty, with consent foresaid, doth declare, That the benefit foresaid introduced hereby anent comprisings, shall be extended to adjudications for debt, so that the creditors at whose instance the same are obtained, and those who have right to redeem the same, shall be in the same case as to the benefite foresaid, as if the said adjudications for debts were comprisings.

The act 1663, *cap.* 10, entitled, " Act in favour of " minors, anent the duties of lands comprised from " them," ratifies the act 1621, *cap.* 6. already noticed, and declares, " that the true meaning thereof was, and " is, that minors having right to the legal reversion " should be no further obliged during their minority " of twenty-one years of age, but allenary for the annualrent of the sums contained in the comprisings, " and that they lose not the right of the superplus of " the maills and duties of the lands, so far as the same " exceeds the said annualrents during their said minority."

The act 1663, *cap.* 22, was passed with reference to the statute 1661, *cap.* 62, which is declared to have no retrospective effect. All preferable apprisings, purchased by posterior apprisers prior to the date of the act, are excepted from its operation, and declared to continue preferable as formerly. It enacts, " that the " saids second comprisers shall noways be prejudged of " the right of the foresaid first comprising redeemed " and satisfied by them : declaring, nevertheless, that " as to the second or posterior comprising, standing in " the party's person who satisfied the first, the same

“ shall only come in with the rest of the comprisers  
 “ *pari passu*, as it is provided by the foresaid act :  
 “ As likewise declaring, that these presents be nowise  
 “ extended to any comprisings satisfied by the second  
 “ comprisers since the making of the foresaid act of  
 “ Parliament, or to be satisfied in time coming.”

The act 1669, *cap.* 18, “ statutes, ordains and de-  
 “ cerns, that the superior of lands, annualrents, and  
 “ others adjudged, shall not be holden to grant any  
 “ charter for infefting the adjudger till such time as he  
 “ be paid and satisfied of the year’s rent of the lands  
 “ and others adjudged, in the same manner as in com-  
 “ prisings : and declares, that in all cases, adjudications  
 “ shall be in the like condition with comprisings as to  
 “ superiors.”

Execution against land for the payment of debt seems to have been known in Scotland as far back as the year 1214. By a statute of Alexander II. *cap.* 24, the Sheriff was instructed to intimate to a debtor who had no moveables, that he must sell his lands within fifteen days, otherwise they would be assigned and transferred irredeemably to the creditor for payment of his debt.

At a later period, letters of apprising were issued upon judgments of the Court of Session, directed originally to Sheriffs, and afterwards to messengers at arms as sheriffs in that part, who valued the lands and transferred an appraised portion to the creditor, subject to a power of redemption. But from partiality, want of skill, and of the due public notice of the sale, this practice gave frequent occasion to hardship and injustice. The next alteration, therefore, provided for this evil. A jury composed of skilful and impartial men at Edinburgh ascer-

tained the value of the debtor's lands by the examination of witnesses. But this being found an expensive measure fell into disuse ; and the creditor was, without any investigation as to the proportion his claim bore to the value of the lands, put in possession of the whole, and suffered to draw the whole rents during the term of redemption, without being obliged to account.

Other improvements were introduced by the acts 1621, *cap.* 6. and 7, and 1661, *cap.* 62, already explained.

At length the statute 1672, *cap.* 19, abolished comprisings altogether, and substituted adjudications in their place ; being a procedure before the Court of Session, whereby all possibility of fraud or undue advantage is saved, the debtor himself being always a party to the action. This important act is in the following terms :

The King's Majesty, considering how far comprisings have deborded from the first design of the legislators, who did never intend that opulent and great estates should be carried away for inconsiderable sums, nor that messengers or ignorant persons should be judges in matters of so great importance ; and considering the great prejudice ensuing to trade and commerce, by the length of the legal reversion formerly granted, the creditor not being able to command his money, and both debtor and creditor neglecting to use any policy and improvement of the lands during the running of the legal reversion ; and that after expiring thereof, comprisings have become the foundation of much fraud ; the right thereof being sometimes acquired by the appearand heirs of the debtor, who thereby secluded the lawful creditors : and that by the ignorance of nottars and messengers, and many unnecessar solemnities, oftentimes nullities have happened in

comprisings, and the same have alwayes been most expensive by heaping of penalties and sheriff-fees. And his Majesty being desirous to secure equally the interest of debtors and creditors, doth, with advice and consent of his Estates of Parliament, statute and ordain, that in place of comprisings, the Lords of Session, upon processes raised before them at the instance of any creditor against his debtor, principal or cautioner, shall adjudge and decern to the creditor, in satisfaction of his debt, as the same shall be decerned by the saids Lords, such a part of the debtor's estate, consisting in lands and other rights which were in use to be appraised, as shall be worth the sum, principal and annualrent, then restand to the creditor, and a fift part more, in respect the creditor wants the use of his money, and is necessitat to take land for the same, besides and attour the composition to the superior, and expences of the infestment; which adjudication shall be made, according to the several rates of the lands and other rights in the places where the same do ly; and for that effect, probation shall be taken by the saids Lords for the part of the creditor, and likewise for the part of the debtor, (if he shall desire the same,) concerning the yearly rent and value of the saids lands and rights, and what they have payed for five years bygone, and what the same may pay, and the rates and prices at which such lands and rights are usually sold in those places of the kingdom where they ly; with power to the saids Lords to determine what warrandice the debtor shall be lyable in to the creditor of the lands and rights so adjudged, as they shall find just. Upon which decret of adjudication, it shall be lawful to the creditor immediately to enter to the possession of the lands or other rights adjudged to him, and to intromet with the mails and duties thereof, in satisfaction of his annualrent during the not redemption, without being lyable to any restriction or action of count and reckoning. And in case there be adjudged lands affected with liferents, or any casualty or other right not yielding rent during the running of the legal after spe-

cified, the same shall be expressed in the said decreet, together with that part of the sum effeirand thereto ; that in case of redemption, the creditor may have his annualrent for that part of his sum, for which he had no profit, in manner foresaid: Which lands and other rights, adjudged as said is, shall remain heretably and irredeemably with the creditor, in case they be not redeemed within the space of five years after the decreet of adjudication, by payment or consignment of the sums, principal and annualrent, for which the adjudication did proceed, the composition payed to the superior, and expences in obtaining infestment and annualrent of the same, in so far as is not satisfied by the creditor's possession in manner foresaid: And the creditor being once in peaceable possession of the saids lands or rights, conform to the decreet of adjudication, it shall not be lawful for him to use any further execution against his debtor, except in the case of eviction upon the warrandice to be decerned by the saids Lords ; but it shall be leisum to the creditor, to use all manner of execution against his debtor, principal, or cautioner, by horning, caption, arreastment, or otherwise, untill he enter to the actual possession of the lands to be adjudged in manner foresaid. And it is hereby statute and ordained, that no comprisings shall be led in time coming, of any lands or other rights, which are not already comprised ; but prejudice alwayes of any apprisings led before the date of this act, or to be deduced of lands or other rights already apprised, whereof the legal is not expired, which are to have course conforme to the laws and acts formerly made thereanent: It is alwayes hereby provided and declared, that in case the debtor shall abstract the writs and evidents of the lands and other rights to be adjudged, and shall not produce a sufficient right thereof, and deliver the same, or transumps thereof, to the creditor, as the Lords shall judge necessary ; and in case he shall not renounce the possession of the lands and other rights to be adjudged, and ratifie the decreet of adjudication, to the effect the creditor may

enter thereto summarly, without any impediment, so that the creditor may have a clear right and quiet possession : then and in that case, it shall be leisom to the creditor to adjudge all or any right belonging to his debtor, in the same manner as he might have apprised the same, conform to the act of Parliament 1661, anent the payment of debts betwixt debtor and creditor, in all points, under the reversion, and with the power competent to other creditors express in the said act. And it is hereby declared, that neither the superior nor the adjudger shall be prejudged by this act, but that they shall be in the same case after citation in this process of adjudication, as if apprising were led of the lands at that time, and a charge given to the superior thereupon : Whilk decreets of adjudication above mentioned shall be allowed by the Lords of Session, as apprisings now are ; and the allowance shall be registrat in the same manner, and under the same certification, with the allowances of comprisings ; to the effect, the same may be known, and that creditors may not be disappointed by adjudging lands already adjudged to others.

In 1681, an attempt was made to revive the old form of apprising. But the motion fell to the ground, in consequence of the prorogation of Parliament ; and the attempt has never again been repeated.

The clauses of the bankrupt statute, 54. Geo. III. *cap.* 137, which apply to adjudication, are noticed in their place, under the title “ *Bankrupt*,”

Stair, B. iv. tit. 51.

Erskine, B. ii. tit. 12.

Bell's Comm. vol. i. p. 701, 5th edition.

## ACTS OF SEDERUNT.

General adjudication without probation of the rental of the debtor's estate, on the second alternative of the act 1672, *cap.* 19, found null; 26. Feb. 1684.

Adjudications on a special charge to enter heir are null, if the forty days for execution of the special charge be not fully elapsed; 18. Feb. 1721.

Adjudications of bankrupt estates may be carried on by the factor in his own name; 24. Feb. 1692.

Principal clerks of session authorised to sign abbreviates under the bankrupt act; 26. Nov. 1793.

## DECISIONS.—ACT 1661.

Wilson *v.* Murray, 27. June 1662, \_\_\_\_\_ Mor. p. 230

Wilson *v.* Home, 20. Feb. 1684, \_\_\_\_\_ 231

Kirkhouse *v.* Husband and Creditors, Nov. 1728, \_\_\_\_\_ 232

Adam *v.* Alison, 1680, \_\_\_\_\_ 234

Sinclair, &c. *v.* Earl of Caithness, &c. 8. Dec. 1781, \_\_\_\_\_ 268

Dalmahoy *v.* Hamilton, 6. Dec. 1661, \_\_\_\_\_ 14765

Miln *v.* Home, 7. July 1664, \_\_\_\_\_ 14766

E. Lauderdale *v.* Lord Oxford, 11. Feb. 1665, \_\_\_\_\_ 14767

Ramsay *v.* Brownlee, 7. Dec. 1736, Elchies, No. 8. *v.* *Adjud.*

Guthrie's Younger Children, 20. Feb. 1741, *ib.* No. 29. —

M'Niel *v.* Buchanan, 7. Feb. 1770, Mor. Appendix, No. I.  
*v.* *Adjudication*, No. 2.

## ACT 1672.

Wilson *v.* Home, 16. Feb. 1684, \_\_\_\_\_ Mor. p. 79

Veitch *v.* Maxwell, 18. Nov. 1708, \_\_\_\_\_ 85

Baillie *v.* Watson, 30. June 1737, \_\_\_\_\_ 88

Mirrie *v.* Hamilton, 15. Jan. 1740, \_\_\_\_\_ 90

Farquhar *v.* Mowat and Co. 14. Jan. 1762, \_\_\_\_\_ 92



Mabens *v.* Ormiston, 25. July 1740, Elch. No. 27. *v.* *Adjudr.*  
 Strachan *v.* Strachan's Creditors, 22. Jan. 1752, *ib.* No. 41. *ib.*  
 Murray *v.* Creditors of Barnet, 16. Nov. 1753, *ib.* No. 46. *ib.*  
 Park *v.* Craig, 15. Nov. 1771, Mor. App. No. 6. *v.* *Adjudr.*  
 Buchanan *v.* Gray, 20. Jan. 1801, *ib.* No. 12.  
 Beaton and M<sup>c</sup>Andrew *v.* Macdonald, &c. 7. June 1821, F. C.

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### ADMIRAL.

The jurisdiction of the Admiral forms the subject of several statutes. In some cases, this jurisdiction is cumulative with that of the Lords of Session and Commissioners of Justiciary; but, in others, it is privative.

By the act 1609, *cap.* 15, it is statute and “ordained, that siklyke execution of horning passe upon all decreets to be given before the said Great Admiral and his deputes in tyme coming, as upon any the said schirefs, commissars, or other inferior judges’ decreits.” This act refers to a former one passed in 1606, which allows execution to pass upon ten days’ warning on the decreets of sheriffs, commissaries, bailies of regalities, bailies of baileries and stewartries. The decreets of the Admiral are left out of the enumeration, because his court is “a soveraigne judicatorie in itself, and of its own nature importing summare execution.”

The act 1681, *cap.* 16, on the preamble, “that the clearing and establishing the jurisdiction of the High Admiral of this kingdom will greatly tend to the advancement and encouragement of trade and navigation,” declares,

That the said High Admiral, as he is his Majesties lieutenant, and justice-general upon the seas, and in all ports, harbours, or creeks of the same, and upon fresh waters, or navigable rivers below the first bridges, or within the flood marks, so far as the same does, or can at any time extend; so the said High Admiral hath the sole priviledge and jurisdiction in all maritim and sea-faring causes, forreign and domestick, whether civil or criminal whatsoever within this realm, and over all persons as they are concerned in the same. And prohibits and discharges all other judges to meddle with the decision of any of the saids causes in the first instance, except the Great Admiral and his deputs allenarly. And statutes, ordains and declares, thàt it is the priviledge of the said High Admiral, to cause parties become enacted, and find caution, not only for compearance, but for performance, of the acts and sentences of his court, and that he may punish all breakers of his arreastments, and resisters of his officers, in the execution of his precepts, and apply the fines and amerciaments to his own use, conform to the laws of the kingdom. And farther statuts and declares, that the High Court of Admiralty is a supreme court, and that the decreets and acts of all other inferiour courts of admirality are subject to the review and reduction of the said High Court of Admiralty. And for the more ready and quick dispatch of justice in maritim and sea-faring causes, forreign and domestick, whether civil or criminal within this realm, and over all persons in so far as they are concerned in the same, both to natives and strangers, our Sovereign Lord, with advice and consent foresaid, prohibits and discharges all advocations in the foresaids causes from the said Court of Admiralty to the Lords of Session, or any other judges whatsoever, in all time coming, and that no suspension or other stop to the execution of the decreets, or acts, of the said Court of Admiralty, be past be the Lords of Session, at any time hereafter, except by the whole Lords, *in presentia*, in time of session, and by three of the saids

Lords the time of vacance met together to that effect : and that if any suspensions or stops shall happen to be past in manner foresaid, the same be summarly discussed upon a bill, and be priviledged and exeemed from the ordinary course of the roll : and if, upon discussing thereof, the same shall be found to have been unjustly and malitiously raised, that the said High Court of Admiralty may, upon the application made by the parties concerned, modifie, and decern the damages they have sustained by the saids suspensions, and stops of execution of their acts and decreets, at-tour the expences of plea before the Lords of Session, which is to be modified by the saids Lords of Session. As also his Majesty, with advice and consent foresaid, statutes and ordains, that it shall be lawful and competent to the said Court of Admiralty, to review their own decreets and sentences, if there be just occasion for the same. And his Majesty, with advice and consent foresaid, decerns and declares, that it is the sole right and priviledge of the High Admiral and his deputs, the judges of the High Court of Admiralty, to grant passes and safe conducts to all ships ; and inhibits and discharges all others to grant the same, as they will be answerable upon their highest peril. And his Majesty, with advice and consent foresaid, casses, annuls, and rescinds, all and whatsoever laws, acts of parliament, or customs, contrary to, or any wayes inconsistent with this present act.

The act 5. of Queen Anne, *cap.* 7. § 19, declares,

That all admiralty jurisdictions be under the Lord High Admiral, or Commissioners for the Admiralty of Great Britain for the time being ; and that the Court of Admiralty, now established in Scotland, be continued ; and that all reviews, reductions, or suspensions of the sentences in maritime cases, competent to the jurisdiction of that court, remain in the same manner after the Union as now in Scotland, until the Parliament of Great Britain shall make such regulations and alterations as shall be judged expedient for

the whole united kingdom : so as there be always continued in Scotland a Court of Admiralty such as in England, for determination of all maritime cases relating to private rights in Scotland, competent to the jurisdiction of the Admiralty Court, subject nevertheless to such regulations and alterations as shall be thought proper to be made by the Parliament of Great Britain.

The act 1. and 2. of Geo. IV. *cap.* 39, “ for better regulation of the Courts of Admiralty in Scotland, and of certain proceedings in the Court of Session connected therewith,” declares,

That hereafter it shall not be competent to insist in any civil process before the High Court of Admiralty, where the subject matter in dispute, exclusive of expences, is of less value than £.25 sterling, except only maritime cases wherein the said court has a privative jurisdiction, and actions for recovery of premiums of insurance on ships and cargoes, and actions for mercantile claims against shipmasters and owners of vessels, if preceded by arrestment of the vessel.

II. And be it further enacted, That, in all cases, where a bill of suspension, complaining of a decret of the said court, in a matter of maritime jurisdiction, shall be reported to the Lords of either Division of the Court of Session, and in all cases when a petition shall be presented to the said Lords, reclaiming against an interlocutor of the Lord Ordinary on the Bills refusing any such bill, the said Lords shall discuss the reasons of suspension upon the bill, without letters of suspension being expedited thereon, the same being in such cases hereby prohibited, but with the same powers and authorities, as if letters of suspension had been already expedited: provided always, that this regulation shall in nowise impair the effect of the rules in the Bill-Chamber with respect to caution, nor shall the obligations of the cautioners, in such cases, be extinguished or impaired by the expediting of the letters of suspension being prohibited.

III. And be it enacted, That every such process of suspension, complaining of a decret of the said court, in a matter of maritime jurisdiction, as well as all processes of reduction of such decreets, after the production shall have been satisfied, and *avizandum* made therewith to the Lords in common form, shall be deemed Inner-House processes, and the reasons, whether of suspension or reduction, shall be discussed in the most expeditious manner possible, in the course of the summar roll ; and it shall be lawful to the court in either division, to remit any such process, whether of suspension or reduction, to the Judge of the said Court of Admiralty, with instructions in what manner to proceed further therein: Provided always, that no proceeding, whether in the form of suspension or reduction, shall be competent for bringing under review any decret pronounced in absence by the Judge of the said court in maritime cases: it being reserved, nevertheless, to any party aggrieved by such decret, to apply to the said Judge in competent form for review of the same.

IV. And whereas it is expedient to shorten the *induciae* of summonses of reduction, raised for bringing under review of the Court of Session decreets pronounced by the Judge of the said court, in cases wherein the pursuer is desirous to bring his action of reduction without delay, Be it enacted, that it shall be competent and lawful to raise such summonses of reduction, with all usual and necessary conclusions, upon one diet of six days, whether the defender or defenders be within Scotland, or forth thereof: Provided always, that the pursuer or pursuers shall, within six days after the last step of proceeding in the Court of Admiralty, give notice, by a notarial instrument of intimation, to the agent in that court of the opposite party or parties, that such process or reduction is to be forthwith raised: and provided also, that the summons shall contain a narrative of such intimation, and shall be passed under the signet within six days after the date of the intimation, and thereafter regularly executed against the defender or defenders without any undue delay.

V. And be it enacted, That the Clerk of the High Court of Admiralty shall discharge the duties of his office personally: Provided always, that the effect of this enactment shall be suspended until the death or resignation of the present Principal Clerk of the said High Court.

VI. And be it further enacted, that the duty of the office of Auditor of Accounts in the said High Court shall be performed by the Clerk of the Judge Admiral.

VII. And be it further enacted, That the Judge Admiral shall be, and is hereby, authorised and required forthwith to frame proper and suitable regulations for abridging the forms of extracts now in use in the various courts of admiralty, and also relative to the consignation, in one or other of the public banks, of all monies required to be consigned in consequence of any proceedings in any of the said courts, having regard to the forms for extracts prescribed by an act passed in the 50th year of the reign of his late Majesty, King Geo. III. entitled, *An act for abridging the form of extracting decreets of the Court of Session in Scotland, and for the regulation of certain parts of the proceedings of that Court.*

VIII. And be it enacted, That the said Judge shall be, and he is hereby authorised and required to frame a proper and suitable table of fees, including the fees of extract and consignation, for regulating and ascertaining the emoluments which shall be justly exigible by the Clerk of the High Court of Admiralty, in such manner as to make his total net emoluments amount as nearly as may be to £.600 *per annum*; and also a proper and suitable table of fees for regulating and ascertaining the emoluments which shall be justly exigible by the deputy of the said principal clerk, until the death, resignation, or removal of his principal, when the fees of such deputy shall cease and determine; and also for regulating and ascertaining the emoluments which shall be justly exigible by the clerk of the said Judge of the High Court of Admiralty, &c.

IX. And be it enacted, That the said Judge shall also, and he is hereby required to frame a proper and suitable table of fees for regulating and ascertaining the emoluments which shall be justly exigible by the person acting as clerk to the Deputy Judge-Admiral of the *Clyde*, and by the clerks of inferior courts of Admiralty, and by the assessors of such courts, and procurators-fiscal, macers and other officers of such courts: Provided always, that in case any such clerk or other officer shall not be willing to accept of the fees specified in such table of fees, in lieu of those now received by him, the operation of such table of fees shall be suspended until the death, resignation or removal of such clerk or other officer.

X. Provided always, that every regulation and table of fees to be framed pursuant to this act shall be presented by the said Judge to the whole Lords of Council and Session, by whom the same shall be considered; and, after deliberation and conference, if necessary, with the said Judge, shall, with or without alteration, be adjusted and published as an Act of Sederunt of the Court of Session. And it shall be lawful to the said Lords to alter any such regulation and table of fees, by a new Act or Acts of Sederunt, from time to time thereafter, as they shall see cause: Provided further, that a copy of every such Act of Sederunt made pursuant to this act, together with the regulation and table of fees to which it refers, shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a copy of the same to be laid before each House of Parliament, at, or immediately after the commencement of the then next Session thereof: And, after the expiration of three calendar months after the first day of such Session, every such Act of Sederunt and regulation shall become in force: And thereafter, but not sooner, every such fee shall, according to the terms of such Act of Sederunt, be, and be deemed and taken to be a legal fee, and payable and receivable as such.

XI. And be it enacted, That all appointments and nominations to any office in any of the said Courts of Admiralty shall be made without receiving any price, gratuity, or valuable consideration of any kind, and shall be forthwith reported to the Judge of the said High Court.

XII. And be it enacted, That if the clerk of the High Court of Admiralty, or his Deputy, shall make application to the Barons of Exchequer in Scotland, and either of them shall make it appear that he has suffered, or will suffer pecuniary loss from the operation or effect of any of the aforesaid regulations, beyond the fees and other emoluments to be thereby allowed or reserved, due consideration being had of the circumstances of the case, the said Barons are hereby authorised and required to examine into such claims, and to decide whether any, and what compensation is due to either of the said clerks; and every order for compensation so made as aforesaid shall be laid before Parliament within three months after the commencement of the session next ensuing the making of the same: Provided always, that no such decision of the said Barons shall be final and conclusive, until three months after a copy of the order of such Barons for compensation shall have been laid before Parliament.

XIII. And be it enacted, That any sum of compensation to be awarded under the authority of this act shall be paid and payable upon the orders of the said Barons, in such manner, and at such time or times as they shall direct, free and clear of all taxes and deductions whatsoever, out of the monies charged or made chargeable by several acts made in the 7th and 10th years of the reign of her late Majesty Queen Anne, with the fees, salaries and other charges allowed for keeping up the Courts of Session, Justiciary and Exchequer.

The salary of the Judge is fixed by the statute 46. of Geo. III. *cap.* 49.

Erskine, I. 3. 33.



There is an old act of Sederunt, 16. January 1554, relative to the jurisdiction of the Admiralty Court; but it has been of course superseded.

Mor. Dict. voce *Jurisdiction*, Division VI.

Magistrates of Rothsay v. Officers of State, 22. June 1820, Fac. Coll.

Bernard v. Connar, 11. June 1811, Fac. Coll.

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## ADULTERY.

Adultery is a violation of the marriage-vow of fidelity, committed by either of the spouses. In England, it is considered merely as a civil trespass, which subjects the guilty party to a claim of damages. But, in Scotland, it is regarded as a crime against society, requiring punishment for the sake of public example.

The criminal penalties are fixed by three statutes.

The act 1551, *cap.* 20, is as follows :

*Item*, Anent persones that ar married, and ar open, manifest, commoun and incorrigible adulterers, and will not desist and cease therefra, for feare of ony spirituall jurisdiction, or censures of halie kirk, to the greate perrell of their awin saules: Therefore it is statute and ordained, in this present Parliament, that all sik incorrigibill adulterers, after that the processe of halie kirk, sa far as the samin may extend to, be used upon them for their in-obedience and contemption, be denounced our Soveraine Ladies rebelles, and put to the horne, and all their moveable, &c. And swa na appellation interponed fra the said censures of halie kirk, to suspend the horning.

The act 1568, *cap.* 74, declares :

*Item*, For-sa-meikle as the abhominabil and filthie vice and crime of adulterie hes bene perniciously and wickedly used within this realm in times by-gane, be sindrie lieges heirof, havand na regaird to the commandementes of God, bot to their awin sensualitie and filthie lustes and pleasour theirowf : And for eschewing of the samin in times cumming : It is statute and ordained be the Queenis Majestie, and Three Estaites in Parliament, that all notour and manifest committers of adulterie in onie time to-cum, after the dait hereof, sall be punished with all rigour unto the death, alsweill the woman as the man, doer and committer of the samin, after that dew monition be maid to absteine fra the said manifest and notour cryme : And for uther adulterie, that the actes and lawes maid theirupon of before, be put to execution with all rigour : And als declaris, that this act on na wise sall prejudge onie partie to persew for divorcement, for the crymes of adulterie before committed, conforme to the law.

To explain the distinction in the latter statute between *simple* and *notour* adultery, the act 1581, *cap.* 105, declares,

That it sall be judged in law notour and manifest adulterie, woorthie of the said paine of death, quhair there is bairnis, ane or maa, procreat betuixt the persons adulterers, or quhen they keepe company and bed togidder notoriouslie knawen, or quhen they are suspect of adulterie, and thereby gives sclander to the kirk ; quhairupon, being dewlie admonished, to absteine and satisfie the kirk be repentance, or purgation, and zit contemptnandlie refusand, are excommunicate for their obstinacie : All thir three degrees of adulterers, and every ane of them, being lauchfully called and convict befor the justice and his deputes, sall incurre and suffer the said paine of death.

And, in the act 1701, *cap.* 11, this statute, along with several others against profanation and immorality, is specially directed to be enforced.

With respect to the civil consequences of adultery, the act 1592, *cap.* 117, declares as follows :

It is statute and ordained be our Soveraine Lord, and Estaites of this present Parliament, that quhen-soever ony woman is, or hes bene divorced fra her lauchfull spouse, for her awin fault and offense of adulterie ; and compleitis unlawfull and pretended mariage with the same person, with quhom she committed the said offence, or plainly and openlie dwellis and resortis in companie with him at bed and buird ; gif she have ony lands, heritage, tackes, rowmes or possessions, it sall not be lauchfull for her to dispone, annallie, or put awaie the samin, in all, or in part, ather to her said pretended husband and adulterer ; or to the succession proceeding of that pretended mariage, or carnal deale : nor to quhat-sum-ever uther person or persons, in prejudice and hurt of the aires and succession procreat upon the said first lauchfull mariage ; or failzieng of them, of her uther lauchfull aires quhat-sum-ever ; nor to do onie deed, directly nor indirectly, that may hurt and prejudice them therein : And declairs and ordainis, that the aires and successours of her, procreat in the said first lauchfull mariage, and, failzieng of them, her uther lauchfull aires quhat-sum-ever, ar and sall be able to succede to her after her decease, in the saidis landes, heritage, tackes and possessiones, notwithstanding anie alienation or disposition maid in onie time by-gane, or to be maid hereafter in the contrair : Quhilks pretended alienations and dispositions, maid or to be maid, in maner foresaid, our Soveraine Lord, and Estaites of Parliament, decernis and declaris to have bene, and to be null from the beginning ; and ordainis the said nullitie to be received and admitted, by way of exception or reply, but ony processe or summons

of reduction, alsweill before the Lordes of Councell and Session, as before the inferiour judges, in service of brieves, and all uther actiones and causes, quhair-ever the samin may occur : And ordainis this present constitution to have full effect anent all dispositiones and alienationes foresaidis, gif onie be maid sen the Parliament halden be our Sovereine Lord, after his perfite age of xxj. zeires compleit in the moneth of July the zeir of God 1587 zeires.

And the act 1600, *cap.* 20, “ Anent the marriage of “ adulterous persons,” declares :

Our Sovereigne Lord, with advyce of the Estaites of this present Parliament, decernes all mariages to be contracted here-after by any persons devorced for their awne cryme and fact of adulterie from their lawfull spouses, with the persons with whom they are declared by sentence of the ordinar judge to have committed the said cryme and fact of adulterie, to be in all tyme comming null, and unlawfull in themselves, and the succession to be gotten be sik unlawfull conjunctions to be unhabile to succeed as heires to their saids parents.

Mr Baron Hume mentions, that very few instances are on record of a criminal prosecution under the statute. He alludes, however, to one or two instances, in which the highest penalty of the act 1563 had been awarded. But, in general, when adultery was made the subject of a prosecution, it was attended with other enormities, such as the murder of the adulterous issue.

Stair, I. 4. 7.—Erskine, I. 6. 43.—Hume on Crimes.

#### DECISIONS.

Act 1600, *cap.* 20.—Lyle and Douglas v. Douglas, 22. June 1670, Mor. p. 329.

Act 1592, *cap.* 119.—Irving v. Ker, 19. Feb. 1696, Mor. p. 331.

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 ADVOCATE.

The mode of admission of an advocate was regulated formerly by the statutes 1537, *cap.* 64 and 65. But this has been altered, and a new form introduced by Act of Sederunt, dated 28. Feb. 1750.

There are two statutes in which the rights of the public and the privileges of advocates are explained :

The act 1587, *cap.* 38, is as follows :

*Item*, That na advocate nor præloquoutour be nawaies stopped to compeir, defend and reason for onie person, accused in Parliament for treason or utherwaies; bot that quhat-sum-ever partie accused sall have full libertie to provide himselfe of advocates and præloquoutoures in competent number to defend his life, honour and land, against quhat-sum-ever accusation, seeing the intending thereof suld not prejudice the partie of all lauchfull defenses, as gif it were *pro confesso*, that the accusation were trew; annulling all actes maid in the contrair hereof before.

The concluding sentence appears to refer particularly to an act passed in the 14th Parliament of King James III. *cap.* 98. (1487,) whereby all the Lords spiritual and temporal, barons, freeholders and communities of the estates of the realm, “sall faithfully  
“promise and swear, that they sall not, in time to  
“come, maintain, fortify, supply, defend, nor be ad-  
“vocates, nor stand at the barre with manifest traitors,  
“nor common menslayers, thieves, rievvers, nor other  
“trespassors, nor persons pertaining to themselves or

“ others : saving it sall be lawful to them, in sober  
“ wise, to stand with their kin and friends, in the de-  
“ fence of them in honest actions.”

And the statute 1587, *cap.* 90. declares, That “ all  
“ and whatsoever lieges of this realm accused of trea-  
“ son, or for whatsoever crime, shall have their ad-  
“ vocates and procurators to use all the lawful defen-  
“ ces, whom the judge shall compel to procure for  
“ them in case of their refuse ; that the suit of the ac-  
“ cuser be not taken *pro confesso*, and the party ac-  
“ cused prejudged in any sort before he be convicted  
“ by lawful trial.”

By the act 1693, *cap.* 20, advocates were required to sign the minutes of debate on occasion of a pleading before the Lord Ordinary. But this enactment, along with many others respecting the form of process, has been superseded by recent provisions on that subject. See Title “ *Court of Session.*”

By the Act of Sederunt 23d February 1687, one clerk or servant of each advocate is entitled to the privileges of the College of Justice.

And by Act of Sederunt, 20th June 1676, all practising advocates are under the control of the Lords of Session.

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## ADVOCATION.

Under proper restraints, the right of appeal from an inferior to a supreme court, is expedient and reasonable. The judgment of the inferior tribunal may be

contrary to law ; or the action in which it is pronounced may not fall under the jurisdiction of that court. On either of these grounds, it is implied, in the very nature of an inferior court, that either of the parties should be entitled to appeal to the higher tribunal. Such a remedy has been accordingly provided by *Advocation and Suspension* ; the former proceeding being competent in every stage of an action, down to the extracting of the final decree ; and the latter, in the cases where such decree has been extracted.

It seems unnecessary to quote the obsolete enactments, 1555, *cap.* 39, and 1641, *cap.* 42.

The act 1663, *cap.* 9, “ Anent the discharging of “ advocations for sums within two hundred merks,”

Discharges the Lords of Session from giving and granting letters of advocation of any actions intended, or to be intended, before whatsoever inferior judicatories which may competently, by the lawes of the kingdom, be decided by the saids inferiour judges before whom the said action is or shall be intended, for sums of money within two hundred merks ; or for any other cause whereunto, by the laws of the kingdom, the saids inferiour judges are expresly appointed judges.

The statute 20. of Geo. II. *cap.* 43, prohibited all advocations for sums under £.12 Sterling.

And the statute 50. of Geo. III. *cap.* 112, § 36, prohibits all bills of advocation against interlocutory sentences of inferior judges, except on the following grounds : “ 1<sup>st</sup>, Of incompetency, including defect of “ jurisdiction, personal objection to the judge, and privilege of party : 2<sup>dly</sup>, Of contingency : 3<sup>dly</sup>, Of “ legal objection with respect to the mode of proof, or

“ with respect to some change of possession, or to an  
“ interim decree for a partial payment ; provided that  
“ in the cases specified in this third head, leave is gi-  
“ ven by the inferior judge.”

Act of Sederunt, 11. July 1826, as to juratory caution in  
advocations.

See Act of Sederunt for regulating the forms of process,  
under the title “ *Court of Session*.”

Stair, IV. 37. 1.—Erskine, IV. 2. 41.

DECISIONS.

Cunningham, 6. July 1775, Mor. p. 375.

Steele v. Thomson, 18. Dec. 1776, *ib.* and App. No. 1. *voce*  
*Advocation*.

M<sup>c</sup>Intosh v. Bennet and Williamson, 14. Feb. 1795, *ib.*  
p. 377, and cases therein referred to.

Brown v. Chrystal, 29. Jan. 1822, S. & D. I. 275.

Ewing v. Hare, 27. Nov. 1822, *ib.* II. 47.

M<sup>c</sup>Ewan v. Davies, &c. 12. Feb. 1824, *ib.* II. 696.

Hamilton, 13. Nov. 1824, *ib.* III. 283.—Turner v. Gibb and  
M<sup>c</sup>Donald, 11. Feb. 1826, *ib.* IV. 449.

Sellers v. Lindsay, 13. May 1825, *ib.* IV. 8.

Berry v. Haddon & Dale, 16. Dec. 1815, F. C.—Brodie,  
8. June 1821, *ib.*—Taylor & Co. v. Ross, 30. June 1821, *ib.*

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ALIENS.

There are several statutes for the protection and en-  
couragement of foreigners in Scotland.

The act 1558, *cap.* 65. and 66, was intended as a  
counterpart of a French statute, or letter of naturalité,  
for the benefit of such natives of Scotland as should vi-  
sit France. It bestows on Frenchmen in Scotland a  
right to acquire heritable property, and to transmit it



to their heirs ; it also empowers these foreigners to hold offices.

In the statute 1661, *cap.* 39, “ for the fishings, and “ erecting of companies for promoving of the same,” there is a clause naturalizing all strangers fishers who may repair to Scotland ; and declaring, that they “ shall “ be entered burgesses in any city where they shall reside, and shall be freed from all manner of taxation, “ for the space of seven years next after their arrival.”

A similar privilege is conferred on those aliens who come to Scotland for carrying on any manufactory, by the act 1661, *cap.* 40.

The act 1669, *cap.* 7, “ for naturalization of strangers,” limits the benefit to those of the Protestant religion, and who specially petition the Privy Council. It declares,

That all strangers, being of the Protestant religion, either such who having estates shall think fit to bring the same to this kingdom, to dwell and inhabite within the same ; or who shall come to set up new works and manufactories therein, and shall repair to and settle their abode, dwelling and residence within this kingdom ; shall be, and are hereby naturalized as native born subjects of the kingdom of Scotland, and are to enjoy his Majesties royal protection, the benefit of the law, and all other priviledges which a native doth enjoy, als freely in all respects, as if they themselves had been born within the same ; and that they shall have liberty and freedom of trade, and freedom to buy and purchase lands, heretages, and other goods, moveable and immoveable, and to enjoy the same by succession, purchase or donation, or any other way ; and to dispose thereof and transmit them to their heirs and successors, who are to succeed thereunto : And to enjoy all other liberties, priviledges and capacities

which do belong to and are competent, or may and shall belong to any native subject born within this kingdom. And further his Majesty doth declare, that upon applications to be made unto him by these strangers, he will grant unto them the free and publick exercise of their religion in their own languages, and the liberty of having churches within this his kingdom.

These statutes are confirmed by the act 1681, *cap.* 12, "for encouraging trade and manufactories," which declares, "that if any strangers shall come, or be brought into this kingdom by natives, to set up, work and teach his act of making of cloths, stuffs, stockings, soap, or any kind of manufactory, that he shall enjoy the benefit of law, and all other privileges that a native doth enjoy. With power to set up manufactories, either in burgh or landward, as they shall think fit; and there to dwell and exercise their trade without any stop or trouble: and that they shall have liberty and freedom of trade, and to buy and purchase lands and heritages, and all other goods moveable and immoveable, and all other privileges, liberties, and capacities that do belong to any native subject born within this kingdom."

The act 7. of Q. Anne, *cap.* 4, § 3, declares, "that the children of all natural born subjects, born out of the liegeance of her Majesty, her heirs and successors, shall be deemed, adjudged and taken to be natural born subjects of this kingdom, to all intents, constructions and purposes whatsoever."

This act was repealed in all its provisions, except the clause just quoted, by the act 10. of Q. Anne, *cap.* 4.

And both of these acts, passed in the reign of Q.

Anne, were explained and amended by the act 4. of Geo. II. *cap.* 21, which is in the following terms :

Whereas, by an act of Parliament made in the seventh year of the reign of her late Majesty Queen Anne, (intituled, An act for naturalizing of foreign Protestants,) it is (amongst other things) enacted, that the children of all natural born subjects, born out of the ligeance of her said late Majesty, her heirs and successors, should be deemed, adjudged, and taken to be natural born subjects of this kingdom, to all intents, constructions and purposes whatsoever : And whereas, in the tenth year of her said late Majesty's reign, another act was made and passed, to repeal the said act (except what related to the children of her Majesty's natural subjects, born out of her Majesty's allegiance,) and whereas some doubts have arisen upon the construction of the said recited clause in the said act of the seventh year of her late Majesty's reign : Now, for the explaining the said recited clause in the said act, relating to children of natural born subjects, and to prevent any disputes touching the true intent and meaning thereof, may it please your most excellent Majesty, that it may be declared and enacted, and be it declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and the Commons, in this present Parliament assembled, and by authority of the same, that all children born out of the ligeance of the crown of England, or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural born subjects of the crown of England, or of Great Britain, at the time of the birth of such children respectively, shall and may, by virtue of the said recited clause in the said act of the seventh year of the reign of her said late Majesty, and of this present act, be adjudged and taken to be, and all such children are hereby declared to be natural born subjects of the crown of Great Britain, to all intents, constructions and purposes whatsoever.

Provided always, and be it further declared and enacted by the authority aforesaid, that nothing in the said recited act of the seventh year of her said late Majesty's reign, or in this present act contained; did, doth, or shall extend, or ought to be construed, adjudged, or taken to extend, to make any children born, or to be born out of the ligeance of the crown of England, or of the crown of Great Britain, to be natural born subjects of the crown of England, or of Great Britain, whose fathers, at the time of the birth of such children respectively, were or shall be attainted of high treason, by judgment, outlawry, or otherwise, either in this kingdom or in Ireland, or whose fathers, at the time of the birth of such children respectively, by any law or laws made in this kingdom, or in Ireland, were or shall be liable to the penalties of high treason or felony, in case of their returning into this kingdom, or into Ireland, without the licence of his Majesty, his heirs or successors, or of any of his Majesty's royal predecessors, or whose fathers, at the time of the birth of such children respectively, were or shall be in the actual service of any foreign prince or state, then in enmity with the crown of England, or of Great Britain, but that all such children are, were, and shall be and remain in the same state, plight and condition to all intents, constructions and purposes whatsoever, as they would have been in, if the said act of the seventh year of her said late Majesty's reign, or this present act had never been made; any thing herein, or in the said act of the seventh year of her said late Majesty's reign, contained to the contrary in any wise notwithstanding.

Provided always, and be it further enacted by the authority aforesaid, that if any child, whose father, at the time of the birth of such child, was attainted of high treason as aforesaid, or was liable to the penalties of high treason or felony, in case of returning into this kingdom, or Ireland, without licence as aforesaid, or was in the actual service of any foreign prince or state, then in enmity with the crown

of England or of Great Britain (other than, and excepting always out of this proviso, all children of such persons who went out of Ireland, in pursuance of the articles of Limerick) hath come into Great Britain or Ireland, or any other of the dominions belonging to the crown of Great Britain, and hath continued to reside within Great Britain or Ireland, or other the dominions aforesaid, for the space of two years, at any time between the 16th day of November in the year of our Lord 1708, and the 25th day of March in the year of our Lord 1731, and during such residence hath professed the Protestant religion, or if any child, whose father, at the time of his or her birth, was within any of the descriptions before mentioned, hath come into Great Britain or Ireland, or any other of the dominions belonging to the crown of Great Britain, and professed the Protestant religion, and died within Great Britain or Ireland, or any other of the dominions aforesaid, at any time between the said 16th day of November in the year of our Lord 1708, and the said 25th day of March in the year of our Lord 1731; or if any child, whose father at the time of his or her birth, was within any of the descriptions before mentioned, hath been and continued in the actual possession or receipt of the rents and profits of any lands, tenements or hereditaments, in Great Britain or Ireland, for the space of one whole year, at any time between the said 16th day of November in the year of our Lord 1708, and the said 25th day of March in the year of our Lord 1731, or hath *bona fide*, and for good and valuable consideration, sold, conveyed, or settled any lands, tenements or hereditaments in Great Britain or Ireland, and any person claiming title thereto, under such sale, conveyance or settlement, hath been and continued in the actual possession or receipt of the rents and profits thereof, for the space of six months, between the said 16th day of November in the year of our Lord 1708, and the said 25th day of March in the year of our Lord 1731, every such child shall be deemed, adjudged, and ta-

ken to be, and to have been a natural born subject of the crown of England, or of the crown of Great Britain, to all intents, constructions and purposes whatsoever ; any thing herein contained to the contrary thereof in any wise notwithstanding.

The statute 13. of Geo. III. *cap.* 21, was passed “ to extend the provisions of the above act 4. of Geo. II. for naturalising foreign Protestants, and to explain the clause which relates to the children of the natural born subjects of the crown of England, or of Great Britain, to the children of such children.”

One thing was still wanting to place aliens on the same footing with natives, viz. to secure the descent of their property to their heirs, according to the rules of the municipal law. For this purpose, a statute was passed in the 11th and 12th years of the reign of King William III., entitled, “ An act to enable his Majesty’s natural born subjects to inherit the estates of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.” But, “ where- as doubts have arisen, whether the provision of the foresaid statute would take place in Scotland ; and it is reasonable, that the same rule of succession should take place in both parts of the united kingdom, and that such doubts should be removed ;” therefore the act 16. of Geo. III. *cap.* 52, “ to declare his Majesty’s natural born subjects inheritable to the estate of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens,” declares,

That all and every person being the King’s natural born subject within this united kingdom, or any other of the King’s

realms or dominions, shall and may hereafter lawfully inherit and be inheritable in Scotland, as heir or heirs to any honours, manors, lands, tenements or hereditaments, and make their pedigrees and titles by descent from any of their ancestors, lineal or collateral, although the father or mother or other ancestor of such person by, from, through or under whom he, she or they shall or may make or derive their title or pedigree, were or was, or is or are, or shall be born out of the King's allegiance, and out of his Majesty's realms and dominions, as freely, fully, and effectually, to all intents and purposes, as if such father or mother, or other ancestor, by, from, through or under whom he, she or they shall or may make or derive their title or pedigree, had been naturalized or natural born subject or subjects within the King's dominions, any law or custom to the contrary notwithstanding.

II. Provided always, and be it further enacted, That no person or persons shall be hereby enabled to inherit, as heir or heirs, or co-heir or co-heirs, to any person dying seised of any manors, lands, tenements or hereditaments, in possession, reversion or remainder, through any alien, ancestor or ancestors, unless the person so claiming, or deriving his title as heir or co-heir, was or shall be in being, and capable to take the same estate as heirs or co-heir, at the death of the person who shall so last die seised of such manors, lands, tenements or hereditaments, and to whom he or she shall so claim to be heirs or co-heirs.

III. Provided also, and be it enacted, That in case the person or persons who shall be in being, and capable to take, at the death of the ancestor so dying seised of any such honours, manors, lands, tenements or hereditaments, and upon whom the descent shall be cast, shall happen to be a daughter or daughters of any alien, and that the alien father or mother, through whom such descent shall be derived by such daughter or daughters, shall afterwards have a son born within any of his Majesty's realms or dominions, the

descent so cast upon such daughter or daughters shall be diverted in favour of such son, and such son shall inherit and take the estate in like manner as is allowed by the common law in cases of the birth of a nearer heir; or in case such father or mother shall have no son or sons, but shall have one or more daughter or daughters afterwards born within any of his Majesty's realms or dominions, the daughter or daughters so born afterwards shall inherit and take in coparcenary with the daughter or daughters, upon whom the descent shall be cast at the death of the ancestor last seised, any thing in this act contained to the contrary notwithstanding.

Erskine, III. 10. 10.

*Macao v. Officers of State*, 14. Nov. 1820, F. C. This decision shews, that the act of Parliament establishing the Bank of Scotland conferred no privilege of naturalization on aliens, proprietors of stock in the bank, except the original holders of such stock.

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### ALIMENT OF POOR PRISONERS.

When a debtor is incarcerated at the instance of a creditor, the law requires that an aliment be provided at such creditor's expense, in all cases where the debtor is unable to aliment himself.

This aliment was regulated and secured by the act 1696, *cap.* 32, commonly called the Act of Grace. But there is a later statute, 6. of Geo. IV. *cap.* 62, which supersedes the former, and is as follows:

“Whereas, by an act of the Parliament of Scotland, pass-



“ ed in the first Parliament of King William III., intituled,  
“ *Act anent the aliment of poor prisoners*, it was enacted, That  
“ where any person is made or shall be made prisoner for a  
“ civil debt or cause, and shall be found or become so poor  
“ as that he cannot aliment himself, then and in that case it  
“ shall be leisom to the Magistrates of the burgh where the  
“ prison is to which the said prisoner is committed, upon the  
“ complaint of the said prisoner, and his making faith in their  
“ presence, that he hath not wherewith to aliment himself, to  
“ intimate the same to the creditors, one or more, at whose in-  
“ stance the said person was committed or is detained, and to  
“ require him and them either to provide and give security for  
“ an aliment to him, not under three shillings Scots, or three-  
“ pence Sterling *per diem*, or else to consent to his liberation;  
“ and whereas much distress is often suffered by such poor  
“ prisoners, from the want of support between the time that  
“ they are committed to prison, and the time when an ali-  
“ ment is awarded and paid to them, pursuant to the said  
“ recited act:” Be it therefore enacted, by the King’s most  
excellent Majesty, by and with the advice and consent of  
the Lords, spiritual and temporal, and Commons, in this  
present Parliament assembled, and by the authority of the  
same, that from and after the expiration of one month after  
the passing of this act, it shall not be lawful for the gaoler  
or keeper of any prison, to which a prisoner shall be brought  
to be confined for a civil debt, to receive such prisoner into  
his custody, or confine him in such prison, unless the sum of  
ten shillings Sterling shall be deposited in his hands by the  
creditor incarcerator, or other person for behoof of such  
creditor, as a means of and security for the aliment of such  
prisoner, in the manner herein directed.

II. And be it enacted, in the event of an aliment being  
awarded under the said recited act, That the gaoler, or other  
person in whose hands the said sum of ten shillings shall have  
been deposited, shall pay out of the same the aliment of the  
said prisoner, at the same rate at which aliment shall sub-

sequently be allowed to such prisoner, from the time that he shall have been brought to the prison to the time when aliment shall have been so awarded to him pursuant to the said recited act, and thereafter until the sum so deposited shall be exhausted.

III. And be it enacted, That where, on application by any such prisoner for the benefit of the said recited act, it shall be found that he is not entitled to the same, then the whole of the said sum of ten shillings by this act required to be deposited, shall forthwith be returned to the creditor or person by whom the same shall have been deposited.

IV. And be it enacted, That where any such prisoner shall not apply for the benefit of the said recited act, before the expiry of thirty days from the day of his commitment, the said sum of ten shillings shall in like manner be returned to the creditor or person by whom the same shall have been deposited, at the expiry of the said thirty days.

V. And be it enacted, That where an aliment shall be awarded to any such prisoner pursuant to the said recited act, but the said sum of ten shillings shall not be thereby exhausted in the manner herein directed, at the time such prisoner shall be liberated, so much of the said sum of ten shillings as shall remain unexhausted, shall be returned to the creditor or person by whom the same shall be deposited.

VI. And be it enacted, That where the creditor shall consent to the liberation of any such prisoner, without payment of any part of the debt for which he shall have been incarcerated, before such prisoner shall have had reasonable time to obtain the benefit of the said recited act, the said sum of ten shillings shall be returned to the creditor or person by whom the same shall have been deposited, after deducting the amount of the aliment of such prisoner during his confinement, at the lowest rate at which aliment is usually modified by the magistrate of the burgh.

VII. And be it enacted, That every prisoner who shall

claim the benefit of the said recited act, shall be bound, when desired, to execute a disposition *omnia bonorum*, in favour of the creditor at whose instance he is incarcerated, for behoof of all his creditors, the expense of such disposition being always defrayed by the creditor demanding the same; and any prisoner refusing to grant such disposition, after being duly required in writing so to do, shall not be entitled to aliment during the time he shall persist in such refusal.

Erskine, IV. 3. 28.—Bell, II. 531.—Dict. *voce* Prisoner, Division III.

Blair v. Magistrates of Edinburgh, 11. Nov. 1704, Fountainhall.—Foote, Henderson & Co. 14. Dec. 1713.—Boyd v. Ponton, 21. Dec. 1811.—M<sup>c</sup>Whinnie, 11. March 1801.—Magistrates of Ayr, 7. Dec. 1803, Mor. 11769.—Magistrates of Edinburgh v. Begbie, 14. Dec. 1808.—Magistrates of Dundee, 16. May 1812.—Duncan, 1. Dec. 1815.—M<sup>c</sup>Laine, 9. June 1821, Shaw, I. 62.—Anderson v. Magistrates of Dingwall, 15. Jan. 1823, *ib.* II. 116.

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### ANN OR ANNAT.

Upon the death of a clergyman, his widow and children have a claim by law to a certain part of the stipend due for the year subsequent to the incumbent's death. The amount of this provision is fixed by the act 1672, *cap.* 13, entitled, "Act for the ann due to the executors of bishops and ministers." It is in the following terms :

The King's Majesty, judging it necessary for the good of the church, that such a stated and equal course be taken

for clearing and securing the Ann due to the executors of deceased bishops, beneficed persons and stipendiary ministers, as may be suitable to the interest of the executors, and no discouragement or hinderance to the planting of the vacant benefices, doth therefore, with advice and consent of his Estates of Parliament, statute and ordain, that, in all such cases hereafter, the Ann shall be an half year's rent of the benefice or stipend, over and above what is due to the defunct for his incumbency, which is now settled to be thus, *viz.* If the incumbent survive Whitsunday, there shall belong to them for their incumbency the half of that year's stipend or benefice, and for the Ann the other half: And if the incumbent survive Michaelmass, he shall have right to that whole year's rent for his incumbency; and for his Ann shall have the half year's rent of the following year: And that the executors shall have right hereto, without necessity or expenses of a confirmation.

The act 50. Geo. III. *cap.* 84, § 16, is as follows:

That the executors or personal representatives of the ministers deceasing, whose stipends shall be augmented under the authority of this act, and the executors or personal representatives of their successors, shall be entitled to draw one-half yearly moiety of the augmentations to be granted under the authority of this act, in name of *Ann*, over and above the stipends that may have been due to the ministers deceasing, in the same manner as is directed by the law of Scotland with respect to the other stipends of the clergy of Scotland: and the Barons of his Majesty's Exchequer shall grant precepts or warrants to his Majesty's said Receiver-General and Paymaster, for payment of the said half yearly moiety in name of *Ann*, to those having right thereto by the law of Scotland, upon their receipt, and this without the necessity of any confirmation or other title to be made up in that behalf.

See the title "*Commission of Teinds.*"

Stair, II. 8. 34.—M'Kenzie, I. 5. 16.—Erskine, II. 10. 66.—Bell, I. 73.

## DECISIONS.

Hutchison, 9. June 1747, _____	Mor. p. 467
M'Kenzie, 19. May 1791, _____	10413
M'Dermet, 14. July 1747, _____	464
Shields v. Town of St Andrew's, 8. Feb. 1709, _____	466
Ker, 16. July 1673, _____	471

## ANNUALRENT.

It is a general principle in the law of Scotland, that annualrent or interest is not due unless specially stipulated. To this, however, there are some exceptions introduced by statute; and others, by reason of their equity, have been sanctioned by practice.

The act 1621, *cap.* 20, complains, in the preamble, of the hardships sustained by creditors who got no interest upon sums due to them, although obliged to employ legal measures for recovery of their debts. It therefore

Statuteth and ordaineth, That whensoever any person is denounced rebel, and put to the horne, for not payment of summes of money, owing by him, by band, contract, or otherwayes: That after the said denunciation, the said person so denounced shall be subject to payment of annuel-rent for the saids summes for the which he is put to the horne, and that of all yeares and tearmes, from the date of the said denunciation, unto the time of payment of the same; and that notwithstanding there be no paction, nor

condition of annuelrent made betwixt the saids parties, which may binde the said partie, who is denounced rebel, unto the payment thereof.

Bills of exchange contain no stipulation of interest, because the purpose of them is only temporary, and they are expected to be speedily extinguished. But, in all cases where a delay of payment takes place beyond the appointed time, the act 1681, *cap.* 20, aluding to foreign bills of exchange, ordains, " That the sums contained in all bills of exchange bear annualrent, in case of non-acceptance, from the date thereof; and, in case of acceptance and not-payment, from the day of their falling due, ay and while the payment thereof."

By the act 1696, *cap.* 36, it is declared, " That the same execution shall be competent, and proceed upon inland bills or precepts, as is provided to pass upon foreign bills of exchange, by the 20th act of the 3d Parliament of K. Charles II, holden *in anno* 1681; which act is hereby extended to inland bills and precepts in all points."

The act 1686, *cap.* 2, entitled, " Act for the better inbringing of his Majesty's supply," declares, " That all cess which shall not be paid within six months after the same falls due, shall bear annualrent after elapsing of the said six months; albeit horning or other diligence be not used for the same."

By Act of Sederunt, 1st February 1610, " Sums paid by cautioners on distress, are made to carry interest, not only as to the capital sum, but as to the interest paid by them; for these make truly a capi-

“ tal sum in respect of the cautioner who pays them,  
 “ without the repayment of which he is not indemni-  
 “ fied.”

By Act of Sederunt, 31st July 1690, “ Factors named  
 “ by the Court on sequestrated estates are also made  
 “ liable in interest for what rents they either have ac-  
 “ tually, or by proper diligence might have recovered,  
 “ from a year after they fall due.” Ersk. III. 3. 78.

By Act of Sederunt, 13th February 1730, annual-  
 rent is due by factors on the estates of pupils not ha-  
 ving tutors, or of persons absent, or who are incapaci-  
 tated from managing their own affairs ; and that from  
 a year after the debts owing to such estates become  
 payable.

According to the practice of the Supreme Court,  
 interest is due in the following cases, though neither  
 stipulated nor sanctioned by statute : Upon trades-  
 men’s accounts, from a year after the date of the last  
*item* of the account ;—upon a writer’s professional ac-  
 count, at the end of three months from the time the  
 account was rendered. But where money has been ad-  
 vanced by a writer, in the way of loan, and not for  
 professional business, interest is due annually. Inte-  
 rest is also due upon accounts between guardians and  
 their wards ;—upon trustees’ accounts ;—annuities to  
 widows ;—provisions to children ;—servants’ wages ;—  
 ministers’ stipend ;—unsettled insurance ; and damages  
 found due by a court.

The *quantum* of interest, allowed to be taken by  
 law for the use of lent money, is explained under the  
 title “ *Usury*.”

Erskine with Ivory's Notes, III. 3. 75.—Thomson on Bills, p. 626.

Act 39. and 40. Geo. III. *cap.* 54, “ for more effectually charging public accountants with the payment of interest ; for allowing interest to them in certain cases, and for compelling the payment of balances due from them.”

## DECISIONS.

Elphinstone, 15. May 1790, Mor. 4067.—Scott's Creditors, 2. Feb. 1773, *ib.* 14189.—Geil's Creditors, 14. Dec. 1773, *ib.* 14190.—Blacks, 9. July 1812, F. C.—Graham, 18. Nov. 1822, S. & D. II. 22. — Anderson, 31. Jan. 1805, Mor. 14836.—Moir, 17. May 1821, S. & D. I. 16.—Hamilton, 15. Feb. 1826, S. & D. IV. 463.—Grant *v.* Leith, 31. Jan. 1811, F. C.—Crawfurd, &c. *v.* Bertram & others, 15. May 1812, *ib.*—M'Kenzie *v.* Campbell & others, 19. Dec. 1818, *ib.*—Garthland's Trustees *v.* M'Dowall, 26. May 1820, *ib.*—Hill *v.* Gilroy, 25. May 1821, *ib.*—Blair *v.* Oliphant, 8. June 1705, Mor. p. 473.—Rig *v.* his Creditors, 30. Jan. 1663, *ib.* 496.—Huntly *v.* Manson, 8. July 1642, *ib.* 497.—Creditors of Dick, 14. Dec. 1756, *ib.* 498.—Assignee of Angus, 7. Dec. 1758, *ib.* 499.—Arbuthnot, 4. Jan. 1758, *ib.* 539.—Ferguson *v.* Stewart, 16. June 1763, *ib.* 541 — Watson, 12. Dec. 1765, *ib.*—Cunninghame, 18. Dec. 1821, S. & D. I. 212.—Montgomery *v.* Wauchope, 4. June 1822, *ib.* I. 453.—Graham *v.* Freer, 14. Jan. 1824, *ib.* II. 606.—Simson's Trustees, 27. Nov. 1823, *ib.* II. 532.—Hardie, &c. *v.* Cauvin, 12. Feb. 1823, *ib.* II. 213. — Henry *v.* Sutherland, 13. Feb. 1801, Mor. App. No. 1. *v.* “ *Annualrent*.” — Campbell *v.* Earl of Galloway, 3. March 1802, No. 4. *ib.* — Dawson *v.* Pringle, 15. June 1808, No. 5. *ib.*—Hall, 23. Nov. 1813, F. C.—Queensberry Executors, 23. May 1822, and 21. Dec. 1826, S. & D. V. 180.—Shirras, 25. June 1824, *ib.* III. 183. — Earl of Fife *v.* Sir J. Duff, 3. March 1827, *ib.* V. 524.



## APPARENT HEIRS.

The estate of a person deceased is liable for his debts. His heir, by getting right to the estate, represents the deceased ancestor in all his obligations and engagements. But, as the heir is now the only debtor, and may have contracted debts of his own, which, together with those of the ancestor, would more than exhaust the estate, it is equitable, that the ancestor's creditors should have it in their power to secure a preference over those of the heir. This has accordingly been provided for by the legislature.

The act 1540, *cap.* 106, declares, that creditors may pursue him who is charged to enter within forty days, but enters not. It is in these terms :

It is statute and ordained, that letters sall be direct, be deliverance of the Lordes of Councell, and at the instance of ony compleiner, to commande and charge the saidis here-toures (they beand of perfite age) to enter to their landes, zeir and daye being paste, after the decease of their father, or predecessoures, quhom to they succeede, to enter to the samin, within fourtie daies, nixt after their charge : And failzieing thereof, letters sall be direct to the schireffe of the schire and his deputes, to apprise the saidis landes to the saidis creditoures, for the saidis debtes (gif they be liquide.) The quhilk processe of apprising sall have als greate strength, force and effect, as the saidis aires were entered thereto, and the saidis apprised landes to be halden of the immediate superiour thereof: Providing alwaies, that it sall be leasum to the saidis heritoures and their successoures, to redeeme the saidis landes, within seven zeires, conforme

to the acte of Parliament maid there-upon of before, and after the tenoure thereof in all poyntes.

The act 1621, *cap.* 27, "Anent comprising from "apparent heirs, extended as well unto men's own "debts as their predecessors," declares :

Our Sovereign Lord, and Estates of this present Parliament, ratifies, approves, and confirms, the 106 act of the seaventh Parliament of King James the Fifth, of worthy memory, intituled, (*The creditor may pursue him, who is charged to enter, and entreth not,*) in all the heads, articles, and clauses thereof. With the addition and explanation following: That the same shall be extended unto debts owing by any person himselfe, as well as to those which are addebted by his predecessors. For the which debt, it shall be as lawful for a creditor, to charge any person to enter heir to his predecessor, and with the like certification, as if the predecessor had been debtor thereintil. Where-upon comprising may follow in manner specified in the said act.

The act 1661, *cap.* 24, "concerning appearing heirs, "their payment of their predecessor's and their own "debts," bestows on the claims of the ancestor's creditors the capacity of receiving a preference over the creditors of the heir. It is in the following terms :

Our Sovereign Lord, with advice and consent of the Estates of Parliament, taking into consideration, that appearand heirs immediately after their predecessor's death, do frequently dispoñe their estate in whole or in part, in prejudice of their predecessor's lawful creditors, before their death come to their knowledge, or before they can do lawful diligence against the saids appearand heirs ; and which dispositions the saids appearand heirs do often make before they be served heirs and infest ; or otherwayes, by collusion they suffer their predecessor's estates to be comprised or adjudged

from them for payment of their own proper debts, real *or* simulate, without respect to their predecessor's creditors : And his Majesty, considering how just it is, that every man's own estate should be first liable to his own debt, before the debts contracted by the appearand heirs : Therefore, his Majesty, with consent foresaid, declares, That the creditors of the defunct shall be preferred to the creditors of the appearand heir in time coming, as to the defunct's estate ; providing alwayes, that the defunct's creditors do diligence against the appearand heir, and the real estate belonging to the defunct, within the space of three years after the defunct's death. And because it were most unreasonable, that the appearand heir, when he is served and retoured heir, and in-*feft respectivè*, should, for the full space of three years, be bound up from making rights and alienations of his predecessor's estate ; and yet it being as unreasonable that he should dispo<sup>n</sup> thereupon immediatly or shortly after his predecessor's death, in prejudice of his predecessor's creditors, he having year and day to advise whether he will enter heir or not : Therefore it is hereby declared, That no right or disposition made by the said appearand heir, in so far as may prejudge his predecessor's creditors, shall be valid, unless it be made and granted a full year after the defunct's death.

In order that the ancestor's creditors may be completely independent of the heir, and at the same time to prevent the heir from being a loser in consequence of representing his ancestor, the act 1695, *cap.* 24, " for obviating the frauds of apparent heirs," declares,

That if any man, since the 1st of January 1661, have served, or shall hereafter serve himself heir ; or, by adjudication on his own bond, hath, since the time foresaid, succeeded, or shall hereafter succeed, not to his immediate predecessor, but to one remoter, as passing by his father to his

goodsire or the like : Then, and in that case, he shall be liable for the debts and deeds of the person interjected, to whom he was apparent heir, and who was in the possession of the lands and estate, to which he is served, for the space of three years, and that in so far as may extend to the value of the said lands and estate, and no further, deducing the debts already paid : As also, with this order as to the time past, that all the true and lawful debts of the apparent heir, entering as said is, and already contracted with the true and real debts of the predecessor, to whom he enters, shall be preferred in the first place. As also, his Majesty, with advice and consent foresaid, statutes and ordains, That if any apparent heir for hereafter, shall, without being lawfully served or entred heir, either enter to possess his predecessor's estate, or any part thereof, or shall purchase, by himself or any other to his behoof, any right hereto, or to any legal diligence, or other right affecting the same, whether redeemable or irredeemable, otherwise than the said estate is exposed to a lawful publick roup, and as the highest offerer thereat, without any collusion, his foresaid possession or purchase shall be repute a behaviour as heir, and a sufficient passive title to make him represent his predecessor universally, and to be liable for all his debts and deeds, siklike as if the said apparent heir, possessing or purchasing, as said is, were lawfully served and entred heir to his said predecessor : Declaring always, likeas it is hereby declared, That the said apparent heir may bring the said estate to a roup, whether the estate be bankrupt or not. And it is further statute, That where rights or legal diligences, affecting their predecessor's estates, and be found settled in the person of any such near relation, to whom the apparent heir to the foresaid predecessor may also succeed as heir, the apparent heir's possessing by virtue of the said rights and diligences, except upon lawful purchase by publick roup, as said is, shall not only be a passive title, but the said rights and diligences in the person of the said near relation, shall only be sustained

as valid to exclude the predecessor's creditors, in so far as can be qualified and instructed, that these rights and diligences were truly and honestly purchased for payment of sums of money, and no further. And moreover, his Majesty, with advice and consent foresaid, statutes and ordains, That, for hereafter, any apparent heir shall have free liberty and access to enter to his predecessors *cum beneficio inventarii*, or upon inventory, as use is, in executories and moveables, allowing still to the said apparent heir, year and day to deliberate, in which time he may make up the foresaid inventory, which he is to give up upon oath, full and particular as to all lands, houses, annualrents, or other heritable rights whatsoever, to which the said apparent heir may, or pretends to succeed: Which inventory to be subscribed by him before witnesses, duly insert and designed, shall be given in to the clerk of the sheriff-court of the shire where the defunct's lands and heritage ly; or in case the defunct had no lands or heritage requiring seisin, to the clerk of the shire where the defunct deceased: To which inventory, the sheriff, or sheriff-depute, with the clerk of the court, shall also subscribe in judgment, and record the same in their registers, and give extracts thereof; for all which, the upgiver of the said inventory shall pay no more to the court and clerk thereof, on any account, than the ordinary price of extracts in that court, for an extract of the said inventory: And this inventory is to be given in, recorded and extracted as said is, within the said year and day to deliberate. And thereafter, the foresaid extract thereof, shall, within forty days after the expiration of the said year and day, be again presented and registered in the books of Council and Session, in a particular register to be appointed by the Clerk-Register for that effect. And the apparent heir entring by inventory, in manner foresaid, is hereby declared to be only liable to his predecessor's debts and deeds, *secundum vires inventarii*, and in as far as the value of the heritage, given up in inventory, will extend, and no further: Providing always, likeas it is hereby spe-

cially provided, That if the aforesaid apparent heir shall have any intromission with the defunct's heritable estate, or any part thereof, otherwise than necessary intromission, for custody and preservation, before his giving in, recording and extracting the said inventory in manner foresaid, or if he shall fraudfully omit any thing out of the said inventory, that is, which yet he shall be found to have intromitted with, or possessed, then, and in either of these cases, he shall lose the benefit of the inventory, and be universally liable, as if entered heir without inventory. And further, That if any part of the said heritable estate shall be, without fraud, omitted to be given up by him in the foresaid inventory, and shall not in the mean time, be affected by the diligence of a lawful creditor, he shall have liberty, so soon as he comes to the knowledge thereof, and within forty days thereafter, to make an eik of the same to the said inventory : Which eik is to be made and subscribed, given in and recorded, in the same manner with the principal inventory above mentioned. And, lastly, it is hereby declared, That apparent heirs, if they please, may enter without inventory, as formerly, in all points, and that, whether they enter with or without inventory, they are still to enter by service and retour, or by precepts of *clare constat*, in manner formerly accustomed.

And the act 1696, *cap.* 11, in explanation of the preceding statute, declares,

That such apparent heirs, who before the making of the said act, and according to the law for the time, have purchased by themselves, or others, partial rights to their predecessor's estates, are not included in the above-mentioned part of the said act, but that they may proceed to compleat their said partial purchases, by further purchasing and acquiring of other rights or diligences affecting the said estate, or any part thereof, according to the laws in force before the making of the said act, without incurring the construction or hazard of a behaviour as heir, or of any passive title to make

them represent their predecessors universally, and to be liable for all their debts and deeds, any thing in the foresaid act notwithstanding.

Bankton, III. 5. 67.—Stair, II. 12. 29.—Erskine, III. 8. 94.—Bell, II. 433.

Act of Sederunt relative to this subject, 28. Feb. 1662.

In illustration of the act 1661, it was found, in the case of *M'Lachlan v. Bennet*, 15. June 1826, that a general adjudication at the instance of the trustee for the creditors of the heir, within three years of the ancestor's death, was sufficient to entitle the defunct's creditors to a preference. All the authorities are quoted in Shaw's report of this case, Vol. IV. p. 712.

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## APPEAL.

In the title "*Advocation*," the right to bring a judgment pronounced by an inferior court, under the review of the Court of Session, has been explained. Within certain limits, the same right of appeal, and power of review, are competent to the Judges at the Circuit Courts.

The statute 20. of Geo. II. *cap.* 43, *inter alia* provides :

And to the end that the jurisdiction of the Circuit Courts, in that part of Great Britain called Scotland, may be rendered more useful and beneficial to his Majesty's subjects in that part of the united kingdom, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any party or parties conceiving himself or themselves aggrieved by any interlocutor, decree, sentence, or

judgment of the sheriff's or steward's court of any county, shire, or stewartry, or of the courts of any royal borough, or burgh of regality or barony, or of any court of any baron, or other heretor having such jurisdiction, as is not hereby abrogated or taken away, where such interlocutor, decree, sentence, or judgment shall be, concerning matters criminal, of whatever nature or extent the same may be, except all cases which infer the loss of life or demembration, or in matters civil, where the subject-matter of the suit did not exceed in value the sum of twelve pounds Sterling, to complain and seek relief against the same, by appeal to the next Circuit Court of the Circuit wherein such county, shire, or stewartry, royal borough, or burgh of regality or barony, or such barony or estate shall lie, so as no such appeal be competent before a final decree, sentence, or judgment pronounced; and such appeal, it shall be lawful for the party conceiving himself aggrieved, to take and enter in open court, at the time of pronouncing such decree, judgment, or sentence, or at any time thereafter, within ten days, by lodging the same in the hands of the clerk of court, and serving the adverse party with a duplicate thereof personally, or at his dwelling-house, or his procurator or agent in the cause, and serving in like manner the inferior judge himself, in case the appeal shall contain any conclusion against him by way of censure or reparation of damages, for alleged wilful injustice, oppression, or other malversation; and such service shall be sufficient summons to oblige the respondents to attend and answer, at the next Circuit Court, which shall happen to be held fifteen days at least after such service; and thereupon the judge or judges, at such Circuit Court, shall and may proceed to cognosce, hear, and determine any such appeal or complaint, by the like rules of law and justice as the Court of Session, or Court of Justiciary respectively, may now cognosce and determine in suspensions of the interlocutors, decrees, sentences, or judgments of such inferior courts; but the said Circuit Court shall proceed therein in a



summary way ; and in case they shall find the reasons of any such appeal not to be relevant, or not instructed, or shall determine against the party so complaining or appealing, the said judge or judges shall condemn the appellant or complainer in such costs as the court shall think proper to be paid to the other party, not exceeding the real costs *bona fide* expended by such party ; and the decree, sentence, or judgment of such Circuit Court, in any of the cases aforesaid, shall be final.

Provided, That so much of this act as relates to appeals in civil causes to the Circuit Courts as aforesaid, shall be in force for the space of ten years, to be computed from the said 25th day of March, and to the end of the then next session of Parliament, and no longer.

Provided always, That wherever such appeal shall be brought, such complainer at the same time he enters his appeal as aforesaid, shall lodge in the hands of the clerk of court, from which the appeal is taken, a bond, with a sufficient cautioner for answering and abiding by the judgment of the Circuit Court, and for paying the costs, if any shall be by that court awarded ; and the clerk of court shall be answerable for the sufficiency of such cautioner.

Provided always, and it is hereby enacted by the authority aforesaid, That in case such Circuit Court shall, in cognoscing or proceeding upon such appeal, find any such difficulty to arise, that by means thereof such Circuit Court cannot proceed to the determination of the same, consistently with justice and the nature of the case ; in any such case, and not otherwise, it shall and may be lawful to and for such Circuit Court to certify such appeal, together with the reasons of such difficulty, and the proceedings thereupon had before such Circuit Court, to the Court of Session, or Court of Justiciary respectively ; which courts are hereby respectively authorised and required to proceed in, and determine the same.

This act was made perpetual by 31. of Geo. II. *cap.* 42, and extended to all actions where the sum pursued for is under £.25 Sterling by the statute 54. of Geo. III. *cap.* 67, which is quoted in the title "*Justiciary Court.*"

The mode of appeal from the Court of Session to the House of Lords is regulated by the following sections of the statute 48. of Geo. III. *cap.* 151.

XV. And be it enacted, That hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments, but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the Division of the Judges pronouncing such interlocutory judgments; or except in cases where there is a difference of opinion among the Judges of the said Division; nor shall any appeal to the House of Lords be allowed from interlocutors or decrees of Lords Ordinary which have not been reviewed by the Judges sitting in the Division to which such Lords Ordinary belong: Provided, that when a judgment or decree is appealed from, it shall be competent to either party to appeal to the House of Lords from all or any of the interlocutors that may have been pronounced in the cause, so that the whole, as far as it is necessary, may be brought under the review of the House of Lords.

XVI. Provided always, and be it enacted, That if the reclaiming or representing days against an interlocutor of a Lord Ordinary shall, from mistake or inadvertency, have expired, it shall be competent, with the leave of the Lord Ordinary, to submit the said interlocutor by petition to the review of the Division to which the said Lord Ordinary belongs; but declaring always, that in the event of such petition being presented, the petitioners shall be subjected in the payment of the expences previously incurred in the process by the other party.

XVII. And be it enacted, That when any appeal is lodged in the House of Lords, a copy of the petition of appeal shall be laid by the respondent or respondents before the Judges of the Division to which the cause belongs : And the said Division, or any four of the Judges thereof, shall have power to regulate all matters relative to interim possession, or execution and payment of costs and expences already incurred, according to their sound discretion, having a just regard to the interests of the parties as they may be affected by the affirmance or reversal of the judgment or decree appealed from.

XVIII. And be it enacted, That it shall not be competent, by appeal to the House of Lords, touching the regulations so made as to such interim possession, execution and payment of expences or costs, to stop the execution of such regulations as shall have been so made as aforesaid respecting the same : Provided that when the appeal touching the judgment or decree appealed from shall be heard, it shall be competent for the House of Lords to make such order and give such judgment respecting all matters whatsoever which shall have been done or have taken place in pursuance of, or in consequence of, such regulations so made as to interim possession, execution and payment of expences or costs, as the justice of the case shall appear to the said House of Lords to require.

XIX. And be it enacted, That if upon hearing the appeal it shall appear to the House of Lords to be just to decree or adjudge the payment of interest simple or compound by any of the parties in the cause to which each appeal relates, it shall be competent to the said House to decree or adjudge the payment thereof, as the said House, in its sound discretion, shall think meet.

XX. And be it enacted, That if any appeal, presented after the passing of this act to the House of Lords against an interlocutor or decree of the said Court, or either of the Divisions thereof, shall be dismissed for want of prosecution,

it shall be lawful for any respondent in such appeal to apply by petition to that Division of the Court of Session to which such cause shall belong : And it shall be competent to the Judges of the said Division, upon such petition, to decree payment of interest simple or compound, by the appellant to such respondent, in such manner as the said Division in its sound discretion shall think meet, together with the costs or expences which have been incurred in consequence of such appeal.

The other clauses of this act have been superseded by statute 6. of Geo. IV. *cap.* 120. of which the two following sections relate to appeals :

XXV. And be it further enacted, That from and after the expiration of fourteen days after the first day of the next session of Parliament, the decrees or orders of the Court of Session, whether pronounced before or after that time, shall be final, and not subject to be complained of by appeal to the House of Lords, unless the petition of appeal shall be lodged with the clerk of Parliament, or the clerk assistant, within two years from the day of signing the last interlocutor appealed from, or before the end of fourteen days to be accounted from and after the first day of the session or meeting of Parliament for the dispatch of public business next ensuing the said two years : Provided always, that when the person or persons entitled to appeal shall be out of the kingdom of Great Britain and Ireland, it shall be competent for him or them to enter an appeal at any time within five years from the date of the last interlocutor, if he or they shall remain abroad so long, or within two years from the time of coming into Great Britain or Ireland ; the time allowed to such person or persons for lodging his or their appeal in no case on account of mere absence exceeding the foresaid space of five years, together with the space that may elapse before the end of the fourteenth day from and after the session or meeting of Parliament next after the expiration of the said five

years; and in case the person or persons so entitled to appeal shall be under the age of twenty-one years, or *non compos mentis*, it shall be competent for them, or their heirs or representatives, where no appeal had been previously entered on this behalf, to enter an appeal at any time within two years after full age or coming of sound mind, or after the death of the person so disqualified and the opening of the succession to the heir, or before the end of fourteen days after the first day of the session or meeting of Parliament next ensuing the said two years.

XXVI. And be it further enacted, That when any cause shall be carried by appeal to the House of Lords, the appellant shall lay before the House a copy, certified as authentic by the signature of one of the Principal Clerks of Session, or of one of the assistants of the said clerks, for whom the Principal Clerks shall be responsible, of the whole record of the averments and pleas authenticated by the Lord Ordinary in manner above directed; and instead of such cases as are delivered at present to the House of Lords, each party shall present to the House of Lords a case containing a printed copy of the record as authenticated, and of the case presented to the Court of Session, if such there be; and they shall also be at liberty to annex a supplementary statement, containing an account of the further steps which have been taken in the cause since the record was completed, or the former cases prepared, and copies of the interlocutors or parts of interlocutors complained against, with a summary of such additional reasons as may be thought fit, set down in the form now used in the House of Lords.

Erskine I. 3. 27. and IV. 3. 2.

DECISIONS.—ACT 20. GEO. II. *cap.* 43.

Davidson and Co. 10. Dec. 1822, S. & D. II. 76.

48. GEO. III. *cap.* 151.

Brodie, 22. Nov. 1814, F. C.—Earl of Mansfield *v.* Henderson, 2. March 1815, *ibid.*—Johnston *v.* Brown, 17. May 1815, *ibid.*—Sibbald & others, 17. Nov. 1809, *ibid.*—Stewart *v.* Leslie, 10. Dec. 1811, *ibid.*—Thom, 24. May 1811, *ibid.*—Ladies Essex & Mary Ker, 11. Nov. 1812, *ibid.*—Countess of Hadinton *v.* Stein, 20. Nov. 1811, *ibid.*—Murray, 23. Nov. 1811, *ibid.*—Maidment, 5. July 1816, *ibid.*—Campbell, &c. *v.* Harley's Trustees, 6. July 1822, S. & D. I. 550.—M'Kenzie, 9. March 1822, *ibid.* I. 396.—M'Mikan *v.* Crawford, 8. Feb. 1822, *ibid.* I. 301.—Milne *v.* Imlay, 25. Jan. 1822, *ibid.* I. 268.—Watson *v.* Johnstone, 22. Jan. 1822, *ibid.* I. 261.—Henderson 28. Jan. 1802, Mor. App. No. I. *v.* Appeal.—Macnab, &c. *v.* Martin, &c. 24. Dec. 1803, No. 2. *ibid.*—Forbes *v.* M'Intosh, &c. 3. Dec. 1822, S. & D. II. 58.—Davidson & Co. *v.* Mackie, 10. Dec. 1822, *ibid.* II. 76.—Brown, &c. *v.* Jeffrey, &c. 20. Dec. 1822, *ibid.* II. 104.—Baillie *v.* Lady Saltoun, 18. Jan. 1823, *ibid.* II. 128.—Aitken *v.* Greenhill, 8. March 1823, *ibid.* II. 282.—Brock *v.* Cabbell, 11. March 1823, *ibid.* II. 291.—Stephenson's Trustees *v.* Marquis Tweeddale, 3. July 1823, *ibid.* II. 447.—Writers to the Signet *v.* Graham, 2. March 1824, *ibid.* II. 764.

## ARRESTMENT.

When a creditor is obliged to prosecute a debtor whose funds consist of a claim or *jus crediti*, at the debtor's instance, against a third party, the diligence of arrestment is an intimation and command to the debtor in the *jus crediti* not to settle with the creditor in that obligation, "until the debt whereupon the arrestment

“proceeds be secured or satisfied.” Such is the description of arrestments given by Lord Stair, III. 1. 24; and it corresponds with Mr Erskine’s definition, III. 6. 2.

The act 1581, *cap.* 118, “Anent deforcements, breaking of arrestments, and alienations made in defraud of creditors,” is as follows :

Forsameikle as it is heavelie compleened to our Soveraine Lord, be divers his subjectes, That quhen they have upon their lang travell and expenses recovered their sentence, they ar deforced in execution thereof: Lyke as quhen arreistmentes ar maid to make the gudes furthcummand, after the recovery of the debt, the samin ar contempnandlie broken: And farder, the execution of sentences and decreetes are oft-times impedit be fraudfull alienationes of the debttoures landes and guddes, maid be them throw colorate meanes, to their friendes and conjunct persones: And the pleyes and actions upon deforcements, breaking of arreistments, and reduction of fraudefull alienationes, hes bene swa tedious, sumptuous and langsum, that very fewe of them are brocht to ony gude end, quhairby our Soveraine Lordis authoritie is contemned, and his subjectes are brocht to great inconvenient. For remeid quhairof, it is statute and ordained, That the Lordes of Councell and Session proceede summarlie and diligentlie in all actiones of deforcementes, and breaking of arreistmentes, to be intented before them, at the instance of quhatsumever persones, and speciallie that the saidis actiones, quhen they are called, sall with all convenient speed without intermission be put to ane poynt, after the calling thereof. And that the persones convict of deforcement, or breaking of arreistment, sall be punished be the escheit of their guddes movabill, and punischment of their persones, at our said Soveraine Lordis will, according to the lawes observed of before, with this addition, That the pairtie

recoverer of the sentence, sall be first payed of his debt and of his expenses, to be heichlie taxed be the saidis Lordis, and of ane certaine summe of money to be modified at the saidis Lordis discretion, to the pairtie, for the damage and interest susteined be him. Anent the quhilk the pairtie interest sall have the reddie execution upon the first and red-diast guddes and geare of the persone convict, notwithstanding the richt of the escheit pertaining to our said Sovereine Lord, quha for weill of his subjects, wills and grantis that the creditours be preferred to him in this case. And further, with advise of his saidis Three Estaites, it is statute and ordained be his Hienes, That all giftes of escheit, quhilkis sall be given hereafter, to quhatsumever person or persones, of guddes, geare, and uthers cummand in his Hienes handes for deforcement, or breaking of arreistment, sall conteine expresse exception and reservation, to the creditour, of the summes recovered for his principall debt, expenses, and summe, to be modified as said is: And gif ony gift of escheit proceeding upon the cause foresaid be given without the said reservation and exception, the same sall be null and of nane availl. And sik-like, for the greater expedition of reduction of alienationes and dispositiones of landes and guddes, maid in fraude of the creditour, it is statute and ordained, that the samin be maist summarlie decided and privileged be summondes upon 21 dayes warning, without diet, table or continuation of uther summonds: And that the pairtie receiver of the saidis fraudefull alienationes and dispositiones sall not be heard to defend therein, except that they (before they be admitted to produce the saidis alienationes and dispositiones, and to answer to the summonds) consigne in the handes of the Clerk of Register and his deputies, for quhome he sall be halden to answer, sik summes of money, as sall be modified, be the discretion of the saidis Lordes, to be delivered to the pairty persewer, in case the saidis alienationes and dispositiones sall be declared fraudulent.



In some cases, the debt whereupon the arrestment proceeds bears only a small proportion to the amount of the claim arrested ; and the action for the debt may continue so long in court as to produce much inconvenience to the arrestee ; or the debtor may desire a settlement during the dépendence of the process. This may be effected on complying with the condition of the act 1617, *cap.* 17, " anent the loosing of arrestments," which declares, " That all bills and supplications for " loosing of arrestments, which shall be past and delivered by the Lords of Council in time coming, shall " be past upon caution to be found in their books : and " ordains the clerk of the bills to receive the said caution before the giving out of the same for raising of " letters thereupon : And, if any arrestments be otherways loosed, the same to be null and ineffectual."

The act 1661, *cap.* 51, declares, " That all sums of " money which are addebted by bonds, contracts, and " other personal obligations, whereupon no infestments have followed, are and shall be arrestable at " the instance of any creditor, notwithstanding that the " bonds, contracts, and other obligations bear payment of annualrents : And the King's Majesty, with " advice and consent foresaid, declares, that this shall " noways change the nature of the said sums, nor prejudge the heir, nor any other person, their rights to " the same as being heritable, which are hereby declared to remain in their own nature unchanged by " this act, *prout de jure*, except that only the same are " arrestable."

By statute 54. of Geo. III. *cap.* 137, § 2, arrestments may be used before a summons is executed, pro-

vided there be no undue delay in this latter step. And in cases of notour bankruptcy, a *pari passu* preference is declared to belong to all arrestments and poindings executed within sixty days prior, or four months subsequent, to the date of such bankruptcy. See title "*Bankrupt.*"

Act of Sederunt, 1. February 1677.

Act of Sederunt, 23. Jan. 1779: Wages due to the farm servants of a bankrupt tenant are privileged debts on the price of the bankrupt's effects, and preferable to arresters.

Act of Sederunt, 11. July 1826, as to loosing of arrestments.

By statute 19. of Geo. III. *cap.* 20, § 78, annuities granted to the widows, or provisions to the children, of ministers are declared not to be arrestable. As to arrestment in the hands of banking companies, see 7. Geo. IV. *cap.* 67.

## DECISIONS.

Weir, 2. Feb. 1814, F. C.—Johnston, 23. Jan. 1813, *ib.*—Houston, 3. Feb. 1824, S. & D. II. 672.—Atkinson, 14. Jan. 1808, Mor. App. No. 3. v. "*Service and Confirmation.*"—Dunlop, 29. Jan. 1823, S. & D. II. 167.—M'Farlane, 20. Nov. 1823, *ib.* II. 505.—Pitcairn & Scott, 7. Feb. 1809, F. C. Bell, II. 80.—Mill, 18. Dec. 1812, F. C.—Kennedy, 13. Dec. 1821, *Shaw.*—May 7. June 1825, S. & D. IV. 76.—Pindar, 27. May 1824, *ib.* III. 69.—Dick, 1. June 1815, F. C.—Thomson, 318, Bell, II. 76.—Paterson, 16. Feb. 1826, S. & D. IV. 477.—Campbell, 25. Nov. 1823, *ib.* II. 518.—Anderson, Child & Co. 4. Feb. 1825, *ib.* III. 498.—Syme, 7. Dec. 1824, *ib.* III. 372.—Smith, 14. May 1823, *ib.* II. 307.—M'Donald, 2. Feb.

1825, *ib.* III. 494.—M'Geachy, 2. March 1808, Bell, II. 366.—M'Ewan, 27. May 1817, F. C.—Campbell, Thomson & Co. 28. May 1803, Mor. App. No. 2. v. "*Implied Assignment.*"—M'Donald & Elder v. M'Leod, 15. Jan. 1811, F. C.—M'Aulay v. Sault, 6. March 1821, *ib.*—Bertrams v. Barry & Bruce, *eo die*, *ib.*—Wight, 23. May 1822, *ib.*—Fife Banking Co. 8. June 1822, *ib.*—Bedwells & Yates v. Tod, 2. Dec. 1819, *ib.*—Sharp, Fairlie & Co. 21. Feb. 1822, *ib.*

Various illustrations in Mor. voce "*Arrestment,*" beginning at p. 675, arranged under the following heads :

Warrant of arrestment, p. 675.—Formalities, 685.—What subjects arrestable, 695.—In whose hands arrestment may be used, 732.—What property is affected by it, 765.—Nature and effect of arrestment, 773.—Decree of forthcoming, 778.—Breach of arrestment, 784.—Loosing of arrestment, 787.—Ranking of arrestments, 807.—See also Mor. App. v. "*Arrestment.*"

Countess of Hadinton, 8. March 1822, S. & D. I. 387.—M'Ewen v. Blair & Morison, 13. Feb. 1822, *ib.* I. 313.—Wight, 23. May 1822, *ib.* I. 424.—More v. Stirling & Sons, 5. July 1822, *ib.* I. 547.—Creditors of Campbell, 10. March 1798, Mor. 1224.—University of Glasgow, 16. Dec. 1773, *ib.* 682.—Dalrymple, 23. June 1762, *ib.* 752.—Davidson, 11. Dec. 1784, *ib.* 761.—Watson, 5. Dec. 1794, *ib.* 731.—Grierson, 25. Feb. 1780, *ib.* 759.—Douglas, 29. June 1796, *ib.* 16213.—M'Arthur, 22. July 1760, *ib.* 803.

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## ARTIFICERS.

At one period, the Government seems to have entertained a jealousy of any artificers being enticed to leave this country, and to communicate the knowledge of

their art to foreign nations. There are several statutes directed against those who seduced artificers to go into foreign parts. But their provisions to this effect have been repealed, although the acts, in other respects, continue in force.

The first of these is the statute 5. of Geo. I. *cap.* 26, entitled, "An act to prevent the inconveniences arising from seducing artificers in the manufactures of Great Britain into foreign parts." This act has been wholly repealed.

The act 23. of Geo. II. *cap.* 13, was passed for a similar purpose; and moreover prohibits, in § 3, the exportation of tools or utensils used in the woollen or silk manufacture to any port not connected with the British dominions; and the penalty is declared to be, that the offender shall "not only forfeit and lose such tools and utensils, or parts or parcels thereof which shall be so laden or put on board as aforesaid, but also the sum of £.200," &c. Section 4. of this statute empowers officers of the customs to seize such tools; which, after legal condemnation, are to be sold by auction to the highest bidder, and the proceeds given, one half to his Majesty, and the other half to the officer who made the seizure. By section 5. it is declared, that captains or masters of vessels, who permit such tools to be put on board their ships or boats, shall forfeit £.100; and if they belong to his Majesty's service, they shall, besides the penalty of £.100, forfeit their office, and be incapable of any office under his Majesty.

Another act, 14. of Geo. III. *cap.* 71, was passed "to prevent the exportation to foreign parts of utensils

“ made use of in the cotton, linen, woollen, or silk manufactures of this kingdom.” This act continues in force, as well as the concluding part of the former one, against exportation of tools.

Another statute, 22. of Geo. III. *cap.* 60, was passed, “ to prevent the seducing of artificers or workmen employed in printing calicoes, &c. to go abroad : And to prohibit the exporting to foreign parts of any such blocks, plates, or other implements.” The latter part only of this act is in force.

The statute 25. of Geo. III. *cap.* 67, was passed, “ to prohibit the exportation to foreign parts of tools and utensils, made use of in the iron and steel manufactures of this kingdom ; and to prevent the seducing of artificers or workmen employed in these manufactures to go into parts beyond the seas.” The first part only of this act continues in force; and it has been explained, amended, and extended to other tools, by the act 26. of Geo. III. *cap.* 89.

The statute 5. of Geo. IV. *cap.* 97, repeals the various laws relative to artificers going into foreign parts.

And the statute 6. of Geo. IV. *cap.* 129, repeals “ the laws relating to the combination of workmen,” and makes “ other provisions in lieu thereof.” It is as follows :

“ Whereas an act was passed in the last session of Parliament, entitled, *An act to repeal the laws relative to the combination of workmen, and for other purposes therein mentioned*, by which act various statutes and parts of statutes relating to combinations among workmen, for fixing the wages of labour, and for regulating and controlling the mode of carrying on any manufacture, trade or business

“ were repealed, and other provisions were made for protecting the free employment of capital and labour, and for punishing combinations interfering with such freedom, by means of violence, threats, or intimidation: And whereas the provisions of the said act have not been found effectual: and whereas such combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them: and whereas it is expedient to make further provision, as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers, and for that purpose to repeal the said act, and to enact other provisions and regulations in lieu thereof:” therefore repeals the said recited act.

II. Various acts are recited and repealed: And all enactments in any other statutes or acts, which, immediately before the passing of the said recited act of the last session of Parliament, were in force throughout, or in any part of the united kingdom of Great Britain and Ireland, relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or controll the mode of carrying on any manufacture, trade or business, or the management thereof, or relative to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or controll the mode of carrying on any manufacture, trade or business, or the management thereof, or relative to fixing the amount of the wages of labour, or relative to the obliging workmen not hired to enter into work, and every enactment enforcing or extending the application of any of the said several enactments so repealed, shall, notwithstanding the repeal of the said recited act of the last session of Parliament, still be and remain repealed, except

only so far as the same or any of them may have repealed any former act or enactment.

III. And be it further enacted, That from and after the passing of this act, if any person shall, by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavour to force any journeyman, manufacturer, workman, or other person hired or employed in any manufacture, trade or business, to depart from his hiring, employment or work, or to return his work before the same shall be finished, or prevent, or endeavour to prevent any journeyman, manufacturer, workman, or other person not hired or employed, from hiring himself to, or from accepting work or employment from any person or persons ; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest, or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed, or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply with any rules, orders, resolutions or regulations made to obtain an advance, or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof: or if any person shall, by violence to the person or property of another, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting or carrying on such manufacture, trade or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or

servants, every person so offending or aiding, abetting or assisting therein, being convicted thereof in manner herein after mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding three calendar months.

IV. Provided always, and be it enacted, That this act shall not extend to subject any persons to punishment, who shall meet together for the sole purpose of consulting upon, and determining the rate of wages or prices, which the persons present at such meetings, or any of them, shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours of time for which he or they will work in any manufacture, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

V. Provided also, and be it further enacted, That this act shall not extend to subject any persons to punishment who shall meet together, for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, workmen or servants for their work, or the hours or time of working in any manufacture, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, workmen or servants, for their work, or the hours or time of work in any manufacture, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such



agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

VI. And be it further enacted, That all and every persons and person who shall or may offend against this act, shall and may, equally with all other persons, be called upon and compelled to give his or her testimony and evidence as a witness or witnesses on behalf of his Majesty, or of the prosecutor or informer, upon any information to be made or exhibited under this act, against any other person or persons not being such witness or witnesses as aforesaid; and that in all such cases, every person having given his or her testimony or evidence as aforesaid shall be, and is hereby indemnified of, from and against any information to be laid, or prosecution to be commenced against him or her, for having offended in the matter wherein or relative to which he, she or they shall have given testimony or evidence as aforesaid.

VII. " And for the more effectually enforcing and carrying into execution the provisions of this act," be it further enacted, That on complaint and information on oath, before any one Justice or Justices of the Peace, of any offence having been committed against this act, within his or their respective jurisdictions; and within six calendar months before such complaint or information shall be made, such Justice or Justices are hereby authorised and required to summon the person or persons charged with being an offender or offenders against this act, to appear before any two such Justices at a certain time or place to be specified; and if any person or persons so summoned shall not appear according to such summons, then such Justices (proof on oath having been first made before them of the due service of such summons upon such person or persons, by delivering the same to him or them personally, or leaving the same at his or their usual place of abode, provided the same shall be so left twenty-four hours at least before the time which shall be appointed to attend the said Justices upon such summons,)

shall make and issue their warrant or warrants for apprehending the person or persons so summoned, and not appearing as aforesaid, and bringing him or them before such Justices : or it shall be lawful for such Justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same, upon such complaint and information as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons, by such information charged to have offended against this act, and bringing him or them before such Justices; and upon the person or persons complained against appearing upon such summons, or being brought by virtue of such warrant or warrants before such Justices, or upon proof on oath of such person or persons absconding, so that such warrant or warrants cannot be executed, then, such Justices shall, and they are hereby authorised and required forthwith to make inquiry touching the matters complained of, and to examine into the same by the oath or oaths of any one or more credible person or persons as shall be requisite, and to hear and determine the matter of every such complaint; and, upon confession by the party, or proof by one or more credible witness or witnesses upon oath, to convict or acquit the party or parties, against whom complaint shall have been made as aforesaid.

VIII. And be it further enacted, That it shall be lawful for the Justices of the Peace, before whom, any such complaint and information shall be made as aforesaid, and they are hereby authorised and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before such Justices, at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and, if any person or persons so summoned to appear as a witness or witnesses as aforesaid, shall not appear before such Justices at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such sum-

mons, shall not submit to be examined as a witness or witnesses, and give his or their evidence before such Justices, touching the matter of such complaint, then and in every such case, it shall be lawful for such Justices, and they are hereby authorised (proof on oath, in the case of any person not appearing according to such summons having been first made before such Justice of the Peace of the due service of such summons on every such person, by delivering the same to him or her, or by leaving the same twenty-four hours before the time appointed for such person to appear before such Justices, at the usual place of abode of such person,) by warrant under the hand of such Justices, to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such Justices, there to remain without bail or mainprise for three calendar months, or until such person or persons shall submit to be examined, and give evidence before such Justices as aforesaid.

IX. And be it further enacted, That the Justices before whom any person or persons shall be convicted of any offence against this act, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form and to the effect set forth in the schedule to this act annexed.

X. Applies only to England.

XI. Provided always, and be it enacted, That in Scotland all prosecutions under this act may be insisted in at the instance of the public prosecutor, and may be judged of, either by two Justices of the Peace, or by the Sheriff of the county within which the offence may have been committed.

XII. Provided always, and be it further enacted, That if any person convicted of any offence or offences punishable by this act, shall think himself or herself aggrieved by the judgment of such Justices before whom he or she shall have

been convicted, such person shall have liberty to appeal from every such conviction to the next Court of General Sessions or General Quarter Sessions of the Peace, which shall be held for the county, riding, division, city, liberty, town or place wherein such offence was committed: And that the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall immediately enter into recognisances before such Justices (which they are hereby authorised and required to take,) himself in the penal sum of L. 10, with two sufficient sureties in the penal sum of L. 10 of lawful money of Great Britain, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next General Sessions or General Quarter Sessions, and to pay such costs as the said Court shall award on such occasion: And the Justices in the said next Court of General Sessions or General Quarter Sessions are hereby authorised and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party; which decision shall be final: And if, upon hearing the said appeal, the judgment of the Justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall immediately be committed by the said Court to the common gaol or house of correction, without bail or mainprise, according to such conviction, and for the space of time therein mentioned.

XIII. Provided also, and be it further enacted, That no Justice of the Peace, being also a master in the particular trade or manufacture in or concerning which any offence is charged to have been committed under this act, shall act as such Justice under this act.

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BANK-NOTES.

The power of the Banks and Banking Companies in Scotland, to issue notes for sums of money, is restrained by two statutes.

The act 5. of Geo. III. *cap.* 49, “ to prevent the  
“ inconvenience arising from the present method of is-  
“ suing notes and bills by the banks, banking com-  
“ panies and bankers, in that part of Great Britain call-  
“ ed Scotland,” is in the following terms :

“ Whereas a practice has prevailed in Scotland of issuing  
“ notes, commonly called bank-notes, for sums of money  
“ payable to the bearer on demand, or, in the option of the  
“ issuer or granter, payable at the end of six months, with a  
“ sum equal to the legal interest from the demand to that  
“ time : And whereas notes with such option as aforesaid  
“ have been circulated in that part of the united kingdom  
“ to a great extent, and do pass from hand to hand, as  
“ specie, whereby great inconveniences have arisen.” For  
remedy whereof, may it please your Majesty that it may be  
enacted, and be it enacted, &c. That from and after the  
15th day of May 1766, it shall not be lawful for any person  
or persons whatsoever, bodies politic or corporate, to issue  
or give, or cause to be issued or given, within Scotland, any  
note, ticket, token or other writing for money of the nature  
of a bank-note, circulated, or to be circulated as specie, but  
such as shall be payable on demand, in lawful money of  
Great Britain, and without reserving any power or option of  
delaying payment thereof for any time or term whatsoever ;  
and that from and after the said 15th day of May 1766, all  
notes, tickets, tokens, or other writings for money of the na-  
ture of a bank-note, issued previous to the said day, and cir-

culated as specie in that part of the united kingdom, shall, and they are hereby declared and adjudged to be payable on demand in lawful money aforesaid ; any option, condition or other clause therein contained to the contrary notwithstanding.

II. Provided always, That nothing contained in this act shall prevent any person or persons whatsoever, bodies politic or corporate, from issuing post-bills payable seven days after sight, in the same manner as they are at present issued by the Bank of England.

III. And be it further enacted, That all and every person or persons whatsoever, bodies politic or corporate, and the legal administrators of such person or persons, bodies politic or corporate, who shall, after the said 15th day of May 1766, issue, or cause to be issued any note, ticket, token or other writing for money of the nature of a bank-note, circulated, or to be circulated as specie, contrary to the directions of this act before mentioned, and to the true intent and meaning thereof, shall for every such offence forfeit and pay to the person or persons who shall inform and prosecute for the same £500 Sterling, with full costs of suit ; to be sued for and recovered by way of complaint before the Court of Session, upon fifteen days' notice to the person or persons, bodies politic or corporate complained of ; which complaint the said Court of Session is hereby authorised and required summarily to determine without abiding the course of any roll.

IV. And for rendering the payment of all notes, accepted bills, post-bills, tickets, tokens or other writings, for money, of the nature of a bank or banker's note, circulated, or to be circulated as specie in that part of the united kingdom, more effectual, be it further enacted, &c. That from and after the passing of this act, summary execution shall proceed upon every such note, accepted bill, post-bill, ticket, token or other writing, at the instance of the holder thereof, against the person or persons, bodies politic or corporate, and the

legal administrators of such person or persons liable in payment of the same, not only for the sum or sums therein contained, but also for the interest thereof, from the time of demanding payment, and that a protest, taken at the office of the person or persons, bodies politic or corporate, liable in payment of the same, between the hours of nine in the morning and three in the afternoon, for not payment, or for not marking of any such note, accepted bill, post-bill, ticket, token, or other writing, shall be registrable in the Courts of Session, or other competent judicatories, at any time within six months after the date of such protest, that letters of horn-ing upon a charge of six days, and the other usual execution of the law of Scotland, may pass thereupon, in the same manner as is competent by the law of Scotland upon protests of bills of exchange and inland bills duly registered.

V. And be it further enacted, That no suspension or sist of such charge, or other execution, shall pass, but upon a discharge by the holder of the note or notes, accepted bills, or post-bills so protested, or upon an offer or tender made to him or her, in the form of an instrument, duly signed by a notary-public, and two witnesses, of the full contents of such note or notes, bill or bills, with the legal interest thereof from the date of the said protest, and also of the expences of the said protest, registration, and such diligence as shall have followed thereupon, to be certified by an account under the hand of the holder of such note or notes, accepted bills, post-bills, or other writings aforesaid, all in lawful money of Great Britain, saving and reserving always to the person or persons, bodies politic or corporate, who shall make such payment, their action at common law, before any competent court, for repetition of any overcharge in such account of expences, and to the person or persons who shall have protested such note or notes, his, her, or their action, before any competent court, for what further damage he, she, or they, may have incurred by the undue delay of payment.

VI. And for preventing the unnecessary expence and delay of protesting each note, accepted bill, post-bill, ticket, token, or other writing aforesaid, separately, be it enacted, That the holder of such note, accepted bill, post-bill, ticket, token, or other writing aforesaid, after prefixing to his or her protest the full tenor and contents of any one note, accepted bill, post-bill, ticket, token, or other writing aforesaid, issued by the person or persons, bodies politic or corporate, against whom such protest is to be taken, may and shall subjoin thereto the dates and numbers of all other notes or writings aforesaid, of the same tenor and contents whereof he or she shall then demand payment; which protest being duly registered as aforesaid, shall be sufficient warrant for issuing letters of horning and all other execution of the law, for payment of the contents of the whole notes, accepted bills, post-bills, tickets, tokens, or other writings aforesaid, so specified in the protest, any law, usage or custom to the contrary notwithstanding.

VII. And whereas a practice has of late prevailed in that part of the united kingdom called Scotland, of issuing and circulating notes as specie of the nature of bank-notes for small sums, less than twenty shillings lawful money of Great Britain, "whereby great inconveniences have arisen:" For remedy whereof, be it further enacted, That from and after the 1st day of June 1765, no note, accepted bill, post-bill, ticket, token, or other writing circulated, or which may be circulated as specie, in the manner of a bank or banker's note, by any person or persons, bodies politic or corporate, their servants or agents, in that part of the united kingdom, for any sum or sums of money less than twenty shillings lawful money of Great Britain, any law, usage or custom to the contrary notwithstanding; and that the person or persons, bodies politic or corporate, their servants or agents who shall, after the 1st day of June, issue, re-issue, or give out any note, accepted bill, post-bill, ticket, token, or other writing aforesaid, for any sum less than twenty shillings,



shall, for every such offence, forfeit and pay the sum of *£.500* Sterling, with full costs of suit, to the person or persons who shall inform or prosecute for the same, to be sued for and recovered by way of summary complaint before the Court of Session, to be proceeded in, in manner before directed.

VIII. Provided always, That nothing herein contained shall be interpreted to prevent the holders of such notes, accepted bills, post-bills, tickets, tokens, or other writings aforesaid, for sums less than twenty shillings, from passing the same in payment, until the 1st day of June 1766, or from demanding payment thereof, from the person or persons, bodies politic or corporate, who issued the same, at any time.

In the last stamp act, 55. of Geo. III. *cap.* 184, § 14. authorises the issuing of notes payable to the bearer on demand, for any sum not exceeding *£.100* Sterling, to be again issued, without any additional stamp duty. By § 18. of the same statute, it is declared, that no promissory-note payable to the bearer on demand can be issued with the date printed, under a penalty of *£.50* Sterling.

And § 27. requires that every banker, except the Bank of England, shall take out the annual license to entitle them to issue such notes, under a penalty of *£.100*. The requisites of such licenses are explained in the act itself, § 24, 25, and 27.

There was a temporary act, 37. of Geo. III. *cap.* 40, “to allow bankers, and certain banking companies in that part of Great Britain called Scotland, to issue notes for sums under a certain amount, for a limited time ; and for indemnifying all persons who have issued notes for small sums of money in that part of the united kingdom.” There are also other statutes of a similar import, the application of which having ex-

pired in July 1799, it is sufficient to quote their dates : 37. of Geo. III. *cap.* 62 ;—37. of Geo. III. *cap.* 137 ; —38. of Geo. III. *cap.* 2 ;—39. of Geo. III. *cap.* 10 ; —39. of Geo. III. *cap.* 25 ;—and 39. of Geo. III. *cap.* 48. About this period, notes were circulated for the small sum of five shillings ; but the lowest sum now permitted by law is twenty shillings.

There are four statutes for the prevention and punishment of forgery of bank-notes.

The act 41. Geo. III. *cap.* 39, “ for the more effectually preventing the forgery of bank-notes, bank bills of exchange, and bank post-bills,” declares,

That if any person or persons, (other than the officers, workmen, servants, or agents for the time being, of the said Governor and Company, to be authorised and appointed for that purpose by the said Governor and Company, and for the use of the said Governor and Company only,) shall make or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using, or (without being authorised or appointed as aforesaid) shall knowingly have in his, her, or their custody, or possession, (without lawful excuse, the proof whereof shall lie upon the person accused,) any frame, mould, or instrument, for the making of paper with curved or waiving bar-lines, or with the laying wire-lines thereof in a waiving or curved shape, or with any number sum, or amount, expressed in a word or words, in Roman letters, visible in the substance of such paper, or shall manufacture, make, use, vend, expose to sale, publish or dispose of, or cause or procure to be manufactured, made, used, or vended, exposed to sale, published, or disposed of, or aid or assist in the manufacturing, making, using, vending, exposing to sale, publishing, or disposing of, or (without being authorised, or appointed as aforesaid) shall knowingly have in his, her, or their custody or possession, any

paper whatsoever with curved or waiving bar-lines, or with the laying wire-lines thereof in a waiving or curved shape, or having any number, sum, or amount, expressed in a word or words, in Roman letters, appearing visible in the substance of such paper ; or if any person or persons, (except as before excepted,) after the said 24th day of June 1801, shall, by any art, mystery, or contrivance, cause or procure the numerical sum or amount of any bank-note, bank bill of exchange, or bank post-bill, blank bank-note, blank bank bill of exchange, or blank bank post-bill, in a word or words to appear visible in the substance of the paper whereon the same shall be written or printed ; or shall knowingly aid or assist in causing the numerical sum or amount of any bank-note, bank bill of exchange, or bank post-bill, blank bank-note, blank bank bill of exchange, or blank bank post-bill, in a word or words in Roman letters, to appear visible in the substance of the paper whereon the same shall be written or printed, every person or persons so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

II. Provided always, and be it further enacted, That this act shall not extend, or be construed to extend, to restrain or render illegal the negotiation, circulation, or reissuing of any bill or bills of exchange, promissory-note or promissory-notes, which have already lawfully been issued, negotiated, or circulated, or which shall or may be now lawfully re-issued, negotiated, or circulated, before the 1st day of November 1801, notwithstanding the same shall be written or printed upon paper, which by this act is prohibited from being manufactured, made, used, vended, exposed to sale, published, or disposed of, except by the Governor and Company of the Bank of England, any thing herein contained to the contrary thereof in anywise notwithstanding.-

III. Provided also, and be it further enacted, That nothing herein contained shall extend, or be construed to ex-

tend, to restrain any person or persons from issuing or negotiating any bill or bills of exchange, promissory-note or promissory-notes, having the sum or amount thereof expressed in guineas, or in a numerical figure or figures denominating the sum or amount thereof in pounds sterling, appearing visible in the substance of the paper upon which the same shall be written or printed, any thing herein contained to the contrary thereof in anywise notwithstanding.

IV. Provided also, and be it further enacted, That nothing in this act contained shall restrain or prevent any person or persons from making, using, vending, exposing to sale, publishing, or disposing of any paper, having waiving or curved lines, or any other device in the nature of water-marks, visible in the substance of the paper, not being bar-lines, or laying wire-lines, provided the same are not contrived in such manner as to form the groundwork or texture of the paper, or to imitate or resemble the waiving or curved laying wire-lines, or bar-lines of the said new paper of the Governor and Company of the Bank of England, or to imitate or resemble the water-marks used by the Governor and Company of the Bank of England, in the bank-notes, bank bills of exchange, and bank post-bills, issued by the said Governor and Company, any thing herein contained to the contrary thereof in anywise notwithstanding.

V. And be it further enacted, That if any person or persons shall, from and after the passing of this act, purchase or receive from any other person or persons, any forged or counterfeited bank-note, bank bill of exchange, bank post-bill or blank bank-note, blank bank-bill of exchange or blank bank post-bill, knowing the same to be forged or counterfeited; or shall knowingly or wittingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, out-house, lodgings, or apartments, any forged or counterfeited bank-note, bank bill of exchange, bank post-bill, or blank bank-note, blank bank bill of exchange, or blank bank post-bill, knowing the same to be forged or coun-

terfeited, (without lawful excuse, the proof whereof shall be upon the person accused), every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

“ VI. And whereas the laws now in force do not inflict  
“ a sufficient punishment upon offenders concerned in en-  
“ graving plates and printing blank forms for bank-notes,  
“ bank bills of exchange, and bank post-bills, for the pur-  
“ pose of being made use of in perpetrating the crime of  
“ forgery :” For remedy whereof, be it further enacted, That  
if any person or persons, from and after the passing of this  
act, shall engrave, cut, etch, scrape, or by any other means  
or device make, or shall cause or procure to be engraved,  
cut, etched, scraped, or by any other means or device make,  
or shall knowingly aid or assist in the engraving, cutting,  
etching, scraping, or by any other means or device making,  
in or upon any plate of copper, brass, steel, pewter, or of any  
other metal or mixture of metals, or upon any wood, or any  
other materials, or any plate whatsoever, any bank-note, bank  
bill of exchange, bank post-bill, or blank bank-note, blank  
bank bill of exchange, or blank bank post-bill, or part of a  
bank-note, bank bill of exchange, or bank post-bill, pur-  
porting to be the note or bill of exchange, or bank post-bill,  
or blank bank-note, or blank bank bill of exchange, or blank  
bank post-bill, or part of the note or bill of exchange or  
bank post-bill of the Governor and Company of the Bank  
of England, without an authority in writing for that pur-  
pose from the said Governor and Company of the Bank of  
England, or shall use any such plate so engraved, cut, etch-  
ed, scraped, or by any other means or device made, or shall  
use any other instrument or device for the making or print-  
ing any such bank-note, bank bill of exchange, or bank  
post-bill, or blank bank-note or blank bank bill of exchange, or  
blank bank post-bill, or part of a bank-note, or bank bill of  
exchange, or bank post-bill, without such authority in writ-

ing as aforesaid; or if any person or persons shall, after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody any such plate, instrument, or device, or shall, without such authority as aforesaid, knowingly and wilfully utter, publish, dispose of, or put away, any such bank-note, bank bill of exchange, bank post-bill, blank bank-note, blank bank bill of exchange or blank bank post-bill, or part of such bank-note, bank bill of exchange, or bank post-bill, every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of seven years.

The statute 41. of Geo. III. *cap.* 57, “for the better prevention of the forgery of the notes and bills of exchange of persons carrying on the business of Bankers,” is in these terms :

“Whereas it is expedient to prevent the crime of forgery in all parts of the united kingdom of Great Britain and Ireland;” be it therefore enacted, &c. That if any person or persons, in that part of the united kingdom of Great Britain and Ireland, from and after the 18th day of July 1801, shall make, or cause or procure to be made, or knowingly aid or assist in the making or using, of any frame, mould, or part of any frame or mould, for the making of paper, with the name or firm appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership carrying on the business of banking, without an authority in writing for that purpose from such person or persons, body corporate, or other banking company or partnership, or from some person or persons duly authorised to give such authority; or shall manufacture, make, vend, expose to sale, publish or dispose of, or cause or procure to be manufactured, made, vended, or exposed to sale, published or disposed of, any paper having

the name or firm, appearing visible in the substance of the paper, of any person or persons, body corporate, or other banking company or partnership whatsoever, carrying on the business of bankers; or if any person or persons, without such authority, shall, by any art, means, mystery, or contrivance, cause or procure, or shall knowingly aid or assist in causing or procuring, the name or firm of any person or persons, body corporate, or other banking company or partnership carrying on the business of bankers, to appear visible in the substance of the paper whereon the same shall be written or printed, every person or persons so offending in any of the cases aforesaid, and being convicted thereof according to law, shall for the first offence be imprisoned for any time not exceeding two years, nor less than six months, and for the second offence be transported to any of his Majesty's colonies or plantations for the term of seven years.

II. And be it further enacted, That if any person or persons, in any part of the united kingdom of Great Britain and Ireland, from and after the said 10th day of July 1801, shall engrave, cut, etch, scrape, or by any other means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or device making, in or upon any plate whatsoever, any bill of exchange, promissory-note, or other note for the payment of money, or part of any bill of exchange, promissory-note, or other note for the payment of money, purporting to be the bill of exchange, promissory-note, or other note for the payment of money, of any person or persons, body corporate, banking company or partnership carrying on the business of bankers, without an authority in writing for that purpose from such person or persons, body corporate, banking company, or partnership, or some person or persons duly authorised to give such authority; or shall use any such plate so engraved, cut, etched, scraped, or by any other

means or device made, or shall use any other device for the making or printing any such bill of exchange, promissory-note, or other note for the payment of money, without such authority in writing as aforesaid; or if any person or persons shall, after the said 10th day of July 1801, without such authority as aforesaid, knowingly have in his, her, or their custody, any such plate or device, or shall, without such authority as aforesaid, knowingly and wilfully publish, dispose of, or put away any such bill of exchange, promissory-note, or other note for the payment of money, or part of such bill of exchange, promissory-note, or other note for the payment of money; every person so offending in any of the cases aforesaid, and being convicted thereof, according to law, shall, for the first offence, be imprisoned for any time not exceeding two years, nor less than six months; and for the second offence be transported to any of his Majesty's colonies or plantations for the term of seven years.

III. And be it farther enacted, That if any person or persons in any part of the united kingdom of Great Britain and Ireland, from and after the 10th day of July 1801, shall engrave, cut, etch, or by any other means or contrivance trace with a hair-stroke, or other mode of delineation, on any plate whatsoever, any of the subscriptions subjoined to any bill of exchange, promissory-note, or other note for the payment of money, of any person or persons, body corporate, or other banking company or partnership carrying on the business of bankers, to be payable to the bearer on demand, or shall have in his, her, or their possession any plate with the hair-strokes or other delineation of any subscription traced thereon, subjoined to any bill of exchange, promissory-note, or other note for the payment of money, purporting to be the bill of exchange and promissory-note, or other note for the payment of money, of any person or persons, body corporate, or other banking company or partnership, carrying on the business of bankers, and to be payable to the bearer on demand, and shall not be able to



prove that such plate came into his, her, or their possession without his, her, or their knowledge or consent, every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall, for the first offence, be imprisoned for any time not exceeding three years, nor less than twelve months; and for the second offence be transported to any of his Majesty's colonies or plantations for the term of seven years.

The statute 45. of Geo. III. *cap.* 89, "to alter and  
"extend the provisions of the laws now in force, for  
"the punishment of the forgery of bank-notes, bills of  
"exchange, and other securities, to every part of Great  
"Britain," declares,

That if any person or persons shall, from and after the passing of this act, falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering any deed, will, testament, bond, writing obligatory, bill of exchange, promissory-note for payment of money, indorsement or assignment of any bill of exchange, or promissory-note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall offer, dispose of, or put away any false, forged, counterfeited, or altered deed, will, testament, bond, writing obligatory, bill of exchange, promissory-note for payment of money, indorsement or assignment of any bill of exchange, or promissory-note for payment of money, acceptance of any bill of exchange, acquittance, or receipt, either for money or goods, accountable receipt for any note, bill, or other se-

curity for payment of money, warrant or order for payment of money, or delivery of goods, with intention to defraud any person or persons, body or bodies politic or corporate, knowing the same to be false, forged, counterfeited, or altered, then every person or persons so offending, and being thereof lawfully convicted according to the due course of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

II. And be it further enacted, That if any person or persons shall, from and after the passing of this act, forge, counterfeit, or alter any bank-note, bank bill of exchange, dividend warrant, or any bond or obligation under the common seal of the Governor and Company of the Bank of England, or any indorsement thereon, or shall offer or dispose of or put away any such forged, counterfeit, or altered note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, or demand the money therein contained, or pretended to be due thereon, or any part thereof, of the said company, or any their officers or servants, knowing such note, bill, dividend warrant, bond, or obligation, or the indorsement thereon, to be forged, counterfeited, or altered, with intent to defraud the said Governor and Company, or their successors, or any other person or persons, body or bodies politic or corporate whatsoever, every person or persons so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

III. And be it further enacted, That if any person or persons (other than the officers, workmen, servants, or agents for the time being of the Governor and Company of the Bank of England, to be authorised and appointed for that purpose by the said Governor and Company, and for the use of the said Governor and Company only) shall, from and after the passing of this act, make or use, or cause or procure to be made or used, or knowingly aid or assist in the making or using, or (without being authorised or appointed as aforesaid) shall

knowingly have in his, her, or their custody or possession, without lawful excuse, the proof whereof shall lie upon the party accused) any frame, mould, or instrument for the making of paper with curved or waiving bar-lines, or with the laying wire-lines thereof in a waiving or curved shape, or with any number, sum, or amount, expressed in a word or words, in Roman letters, visible in the substance of such paper; or shall manufacture, make, use, vend, expose to sale, publish or dispose of, or cause or procure to be manufactured, made, used, vended, exposed to sale, published, or disposed of, or aid or assist in the manufacturing, making, using, vending, exposing to sale, publishing, or disposing of, or (without being authorised or appointed as aforesaid, shall knowingly have in his, her, or their custody or possession, any paper whatsoever with curved or waiving bar-lines, or with the laying wire-lines thereof in a waiving or curved shape, or having any number, sum, or amount expressed in a word or words, in Roman letters appearing visible in the substance of such paper; or if any person or persons (except as before excepted) shall, by any art, mystery, or contrivance, cause or procure the numerical sum or amount of any bank-note, bank bill of exchange, or bank post-bill, blank bank-note, blank bank bill of exchange, or blank bank post-bill, in a word or words to appear visible in the substance of the paper, whereon the same shall be written or printed; or shall knowingly aid or assist in causing the numerical sum or amount of any bank-note, bank bill of exchange, or bank post-bill, blank bank-note, blank bank bill of exchange, or blank bank post-bill, in a word or words in Roman letters to appear visible in the substance of the paper whereon the same shall be written or printed, every person or persons so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

IV. Provided also, and be it further enacted, That nothing

herein contained shall extend, or be construed to extend, to restrain any person or persons from issuing or negotiating any bill or bills of exchange, promissory-note or promissory-notes, having the sum or amount thereof expressed in guineas, or in a numerical figure or figures, denominating the sum or amount thereof in pounds sterling, appearing visible on the substance of the paper upon which the same shall be written or printed; any thing herein contained to the contrary thereof in anywise notwithstanding.

V. Provided also, and be it further enacted, That nothing in this act contained shall restrain or prevent any person or persons from making, using, vending, exposing to sale, publishing, or disposing of any paper, having waiving or curved lines, or any other devices in the nature of water-marks, visible in the substance of the paper, not being bar-lines or laying wire-lines, provided the same are not contrived in such manner as to form the groundwork or texture of the paper, or to imitate or resemble the waiving or curved laying wire-lines or bar-lines of the said paper of the Governor and Company of the Bank of England, or to imitate or resemble the water-marks used by the Governor and Company of the Bank of England in the bank-notes, bank bills of exchange, and bank post-bills, issued by the said Governor and Company; any thing herein contained to the contrary thereof in anywise notwithstanding.

VI. And be it further enacted, That if any person or persons shall, from and after the passing of this act, purchase or receive from any other person or persons any forged or counterfeited bank-note, bank bill of exchange, bank post-bill, or blank bank-note, blank bank bill of exchange, or blank bank post-bill, knowing the same to be forged or counterfeited; or shall knowingly or wittingly have in his, her, or their possession or custody, or in his, her, or their dwelling-house, out-house, lodgings, or apartments, any forged or counterfeited bank-note, bank bill of exchange, or bank post-bill, or blank bank-note, blank bank bill of exchange,

or blank bank post-bill, knowing the same to be forged or counterfeited, (without lawful excuse, the proof whereof shall lie upon the person accused,) every person or persons so offending, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

VII. And be it further enacted, That if any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other means or device making, in or upon any plate of copper, brass, steel, pewter, or of any other metal or mixture of metals, or upon any wood or any other materials, or any plate whatsoever, any bank-note, bank bill of exchange, bank post-bill, or blank bank-note, blank bank bill of exchange, or blank bank post-bill, or part of a bank-note, bank bill of exchange, or bank post-bill, purporting to be the note, or bill of exchange, or bank post-bill, or blank bank-note, or blank bank bill of exchange, or blank bank post-bill, or part of the note, or bill of exchange, or bank post-bill of the Governor and Company of the Bank of England, without an authority in writing for that purpose from the said Governor and Company of the Bank of England; or shall use any such plate so engraved, cut, etched, scraped, or by any other means or device made, or shall use any other instrument or device for the making or printing any such bank-note, bank bill of exchange, or bank post-bill, or blank bank-note, or blank bank bill of exchange, or blank bank post-bill, or part of a bank-note, or bank bill of exchange, or bank post-bill, without such authority in writing as aforesaid; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody, any such plate, instrument, or device, or shall, without

such authority as aforesaid, knowingly and wilfully utter, publish, dispose of, or put away any such blank bank-note, blank bank bill of exchange, or blank bank post-bill, or part of such bank-note, bank bill of exchange, or bank post-bill, every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

VIII. And be it further enacted, That all and every the clauses and provisions in this act contained shall extend, and be deemed and construed to extend by all courts, judges, and magistrates whatsoever, to every part of Great Britain; any thing herein before contained, or any law, statute, or usage to the contrary notwithstanding.

And the statute 1. of Geo. IV. *cap.* 92, “ for the further prevention of forging and counterfeiting of bank-notes,” is to the following purpose :

“ Whereas the forgery of bank-notes hath of late very much increased in this kingdom; and as well for the prevention thereof, as to facilitate the detection of the same, the Governor and Company of the Bank of England have, after great consideration, labour and expence, formed a new plan for printing bank-notes, in which the ground-work of each bank-note will be black or coloured, or black and coloured line work, and the words ‘ Bank of England,’ will be placed at the top of each bank-note, in white letters, upon a black, sable or dark ground, such ground containing white lines intersecting each other, and the numerical amount or sum of each bank-note in the body of the note will be printed in black and red register work, and the back of each note will distinctly show the whole contents thereof, except the number and date, in a reversed impression :” Therefore, for the better prevention of the forgery of bank-notes, and for the security of the public, be it enacted, &c. That from and after the passing of this act, if any person or persons (other than the officers, work-

men, servants and agents for the time being of the said Governor and Company, to be authorised and appointed for that purpose by the said Governor and Company, and for the use of the said Governor and Company only, shall engrave, cut, etch, scrape, or by any other art, means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means or device made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means or device, making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixtures of metal, or upon wood or other materials, or any plate whatsoever, for the purpose of producing a print or impression of all or any part or parts of a bank-note, or of a blank bank-note, of the said Governor and Company, of the description aforesaid, without an authority in writing from the said Governor and Company, or shall use any such plate so engraved, cut, etched, scraped, or by any other art, means or device made, or shall use any other instrument or contrivance, for the making or printing any such bank-note, or blank bank-note, or part of a bank-note of the description aforesaid; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly and without lawful excuse have in his, her, or their custody any such plate or instrument, or, without such authority as aforesaid, shall knowingly or wilfully utter, publish, dispose of, or put away any such blank bank-note, or part of such bank-note, of the description aforesaid, every person so offending in any of the cases aforesaid, and being thereof convicted according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

“ II. And whereas divers frauds have been practised by making and publishing papers with certain words and characters, so nearly resembling the notes of the Governor and Company of the Bank of England, as to appear to ignorant and unwary persons to be the notes of the said

“ Governor and Company; and as it is necessary, for the security of the public, that such practices, as applied to the notes of the said Governor and Company, of the description aforesaid, should be prevented;” Be it therefore further enacted, That if any person or persons, from and after the passing of this act, shall engrave, cut, etch, scrape, or by any other art, means or device make, or shall cause or procure to be engraved, cut, etched, scraped, or by any other art, means or contrivance made, or shall knowingly aid or assist in the engraving, cutting, etching, scraping, or by any other art, means or contrivance making, in or upon any plate of copper, brass, steel, iron, pewter, or of any other metal or mixture of metals, or upon wood or any other materials, or upon any plate whatsoever, any line-work, as or for the ground-work of a promissory-note, or bill of exchange, the impression taken from which line-work shall be intended to resemble the groundwork of a bank-note of the said Governor and Company, of the description aforesaid, or any device, the impression taken from which shall contain the words “ Bank of England” in white letters upon a black, sable or dark ground, either with or without white or other lines therein, or shall contain, in any part thereof, the numerical sum or amount of any promissory-note, or bill of exchange, in black and red register-work, or shall show the reversed contents of a promissory-note or bill of exchange, or of any part of a promissory-note or bill of exchange, or shall contain any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to resemble the whole or any part of the matter or ornaments of any bank-note of the description aforesaid, or shall contain any word, number, figure, or character in white on a black, sable or dark ground, either with or without white or other lines therein, which shall be intended to resemble the numerical sum or amount in the margin, or any other part of any bank-note of the said Governor and Company, without an authority in writing, for that purpose, from the said



Governor and Company, to be produced and proved by the party accused ; or if any person or persons shall, from and after the passing of this act, (without such authority as aforesaid,) use any such plate, wood or other material so engraved, cut, etched, scraped, or by any other art, means or contrivance made, or shall use any other instrument or contrivance for the making or printing upon any paper or other material, any word or words, figure or figures, character or characters, pattern or patterns, which shall be intended to resemble the whole or any part of the matter or ornaments of any such note of the said Governor and Company, of the description aforesaid, or any word, figure or character in white on a black, sable or dark ground, either with or without white or other lines therein, which shall be apparently intended to resemble the numerical sum or amount in the margin, or any other part of any bank-note of the said Governor and Company ; or if any person or persons shall, from and after the passing of this act, without such authority as aforesaid, knowingly have in his, her, or their custody or possession any such plate or instrument, or shall knowingly and wilfully utter, publish or dispose of, or put away any paper or other material containing any such word or words, figure or figures, character or characters, pattern or patterns as aforesaid, or shall knowingly and wilfully have in his, her, or their custody or possession any paper or other material containing any such word or words, figure or figures, character or characters, pattern or patterns as aforesaid, (without lawful excuse, the proof whereof shall lie upon the person accused,) every person so offending in any of the cases aforesaid, and being convicted thereof according to law, shall be adjudged a felon, and shall be transported for the term of fourteen years.

“ III. And whereas it is expedient that the name or names  
“ of the person or persons intrusted and authorised by the  
“ said Governor and Company to sign bank-notes on behalf  
“ of the said Governor and Company, should be impressed

“ by machinery upon bank-notes of the description aforesaid, in such form as may from time to time be adopted by the said Governor and Company, instead of being subscribed in the handwriting of such person or persons respectively: And whereas doubts may arise respecting the validity of such notes;” be it therefore declared and enacted, That all bank-notes of the said Governor and Company of the description aforesaid, whereon the name or names of any person or persons intrusted or authorised to sign such notes on behalf of the said Governor and Company, shall or may be impressed by machinery provided for the purpose by the said Governor and Company, and with the authority of the said Governor and Company, shall be and be taken to be good and valid to all intents and purposes, as if such notes had been subscribed in the proper handwriting of the person or persons intrusted or authorised by the said Governor and Company to sign the same respectively, and shall be deemed and taken to be bank-notes within the meaning of all laws and statutes whatsoever, and shall and may be described as bank-notes in all indictments, and other criminal and civil proceedings whatsoever, any law, statute or usage to the contrary notwithstanding.

## DECISIONS.

*Borland v. Thistle Bank of Glasgow*, Feb. 1768, Mor. 877.  
 —*Swinton v. Beveridge*, 21. June 1799, *ib.* 10105.—*Maberly v. Bank of Scotland*, 27. Feb. 1822, Shaw, I. 360, reversed 27. Feb. 1825.

## BANKRUPT.

Insolvency may arise either from innocent misfortune, or fraud; in the latter case, the bankrupt is an object of punishment.

The first step towards the formation of a system of

bankrupt law in Scotland, was the adoption of the Roman *cessio bonorum*, a form of action by which a bankrupt debtor is enabled to obtain his release from prison, and a protection from the diligence of his creditors, on making a full surrender of all his property. The requisites and forms of procedure in a process of *cessio* are fixed by the following acts of Sederunt of the Court of Session: A. S. 17. May 1606;—26. Feb. 1669;—23. Jan. 1673;—1. Dec. 1685, which declares, that the summons of *cessio* must set forth how the pursuer became *lapsus bonis*; and that the averments on this subject must be proved in the course of the process;—8. Feb. & 18. July 1688;—18. July 1691, regarding the oath to be taken by the bankrupt in a *cessio*.—See Bell's Commentaries, II. 549, and II. 557.

The act 1621, *cap.* 18. is the foundation of the bankrupt law in Scotland. It ratifies a previous act of Sederunt of the Court of Session, dated 12th July 1620, “as a necessary and profitable law for the weal of all his Majesty’s subjects.” This statute is in the following terms:

Our Sovereigne Lord, with advice and consent of the Estates, conveyed in this present Parliament, ratifies, approves, and for his Highnesse, and his successours, perpetually confirms the act of the Lords of Council and Session, made against dyvours and banckrupts, at Edinburgh, the 12 daye of Julie 1620, and ordaines the same to have, and take full effect and execution, as a necessarie and profitable law, for the weale of all his Highnesse subjects: Of the which act the tennor followeth:

The Lords of Council and Session understanding, by the grievous and just complaints of many of his Majesties good subjects, that the fraude, malice, and falshood of a number of dyvours and banckrupts is become so frequent, and



avowed, and hath already taken such progresse, to the overthrow of many honest men's fortunes, and estates, that it is likely to dissolve trust, commerce, and faithful dealing amongst subjects : Whereupon must ensue the ruine of the whole estate, if the godlesse deceites of those be not prevented, and remedied ; who by their apparent wealth in lands and goods, and by their shewe of conscience, credite, and honestie, drawing into their hands upon trust the money, merchandise, and goods, of well-meaning and credulous persons, doe no wayes intend to repay the same ; but either to live ryetously by wasting other men's substance, or to enrich themselves, by that subtile stealth of true men's goods, and to withdraw themselves, and their goods soorth of this realme, to elude all execution of justice : and to that effect, and in manifest defraud of their creditors, do make simulate and fraudulent alienations, dispositions, and other securities, of their lands, reversions, teyndes, goods, actions, debtes, and others belonging unto them, to their wives, children, kinsmen, alleyes, and other confident and interposed persons, without any true, lawful, or necessarie cause, and without any just or true price interveening in their saids bargaines ; whereby their just creditors, and cautioners, are falsly and godlesly defrauded of all payment of their just debt ; and many honest families likely to come to utter ruine.

For remeed whereof, the saids Lordes, according to the power given unto them by his Majestie and his most noble progenitors, to set downe orders for administration of justice, meaning to follow and practise the good and commendable lawes, civil and canon, made against fraudulent alienations, in prejudice of creditors, and against the authors and partakers of such fraude ; statutes ordaines, and declares, That in all actions, and causes depending, or to be intended by any true creditor, for recoverie of his just debt, or satisfaction of his lawful action and right, they will decreete and decerne all alienationes, dispositions, assignations and translations, whatsoever, made by the debtor, of any of his lands, teindes, reversions, actions, debts, or goods whatsoever, to any con-

junct or confident person, without true, just, and necessarie causes, and without a just price really payed, the same beeing done after the contracting of lawful debts from true creditors, to have beene from the beginning, and to be in all times coming, null, and of none availe, force, nor effect, at the instance of the true and just creditor, by way of action, exception, or reply, without farther declarator: And in case any of his Majesties good subjectes (no wayes partakers of the saids fraudes) have lawfully purchased any of the saids bankrupt's landes or goods, by true bargaines, for just and competent pryces, or in satisfaction of their lawful debts, from the interposed persons, trusted by the saids dyvours; in that case, the right lawfully acquired by him who is no wayes partaker of the fraude shall not be annulled in manner foresaid, but the receiver of the pryce of the saids lands, goods and others, from the buyer, shall be holden and obliged to make the same forth-comming to the behoove of the bankrupt's trew creditors, in payment of their lawful debts: And it shall be sufficient probation of the fraud intended against the creditors, if they, or any of them, shall be able to verifie by writte, or by oath, of the partie receiver of any securitie from the dyvour or bankrupt, that the same was made without any true, just, and necessarie cause, or without any true and competent price, or that the landes and goods of the dyvour and bankrupt beeing sold by him who bought them from the said dyvour, the whole, or the most part of the price thereof was converted, or to be converted to the bankrupt's profite and use. Providing alwayes, that so much of the saids lands and goods, or prices thereof so trusted by bankrupts to interposed persons, as hath beene really payed, or assigned by them to any of the bankrupt's lawful creditors, shall be allowed unto them, they making the rest forth-comming to the remanent creditors, who want their due payments. And if in time comming any of the saids dyvours, or their interposed partakers of their fraude, shall make any voluntarie payment or right to any person, in defraude of the lawful and more timely diligence of another creditor, having served inhibi-

tion, or used horning, arreastment, comprizing or other lawful meane, duely to affect the dyvour's lands or goods, or price thereof to his behoove; in that case the said dyvour, or interposed person, shall be holden to make the same forth-comming to the creditor, having used his first lawful diligence, who shall likewise bee preferred to the con creditor, who bee- ing posterior unto him in diligence, hath obtained payment by the partial favour of the debtor, or of his interposed confident, and shall have good action to recover from the said creditor that which was voluntarily payed in defraude of the persuer's diligence.

Finally, The Lordes declares all such bankrupts, and dyvours, and all interposed persons, for covering or executing their frauds, and all others, who shall give counsel, and wilful assistance unto the said bankrupts, in the devising and practising of their saids fraudes and godlesse deceits, to the prejudice of their true creditors, shall be reputed and holden dishonest, false, and infamous persons, incapable of all honours, dignities, benefices, and offices; or to passe upon inqueistes, or assyses, or to beare witnesse in judgement, or out-with in any times comming.

Before a transaction could be brought under the operation of the act 1621, it was necessary to prove the insolvency of the bankrupt at the period when he entered into it. But, as this fact could not always be precisely ascertained, another statute was passed to establish a legal presumption of insolvency, which supersedes all such troublesome and unsatisfactory investigations. The statute 1696, *cap. 5*, is as follows :

Our Sovereign Lord considering, That notwithstanding of the acts of Parliament already made against fraudulent alienations by bankrupts, in prejudice of their creditors, yet their frauds and abuses are still very frequent; does therefore, and for the better restraining and obviating thereof in time coming, with advice and consent of the Estates of Parlia-

ment; statute and declare, That, for hereafter, if any debtor, under diligence by horning and caption at the instance of his creditor, be either imprisoned, or retire to the Abbey, or any other privileged place, or flee, or abscond for his personal security, or defend his person by force, and be afterwards found, by sentence of the Lords of Session, to be insolvent, shall be holden and repute on these three joint grounds, viz. diligence by horning and caption, and insolvency, joined with one or other of the said alternatives of imprisonment, or retiring, or flying, or absconding, or forcible defending, to be a notour bankrupt, and that from the time of his foresaid imprisonment, retiring, flying, absconding, or forcible defending; which being found, by sentence of the Lords of Session, at the instance of any of his just creditors, who are hereby empowered to raise and prosecute a declarator of bankrupt thereanent; his Majesty, with consent of the Estates of Parliament, declares all and whatsoever voluntary dispositions, assignations, or other deeds, which shall be found to be made and granted, directly or indirectly, by the foresaid dyvor or bankrupt, either at, or after his becoming bankrupt, or in the space of sixty days of before, in favours of his creditors, either for his satisfaction, or further security, in preference to other creditors, to be void and null: Likeas, it is declared, That all dispositions, heritable bonds, or other heritable rights, whereupon infestment may follow, granted by the foresaid bankrupts, shall only be reckoned, as to this case of bankrupt, to be of the date of the seisin lawfully taken thereon, but prejudice to the validity of the said heritable rights, as to all other effects, as formerly: And because infestments for relief, not only of debts already contracted, but of debts to be contracted for thereafter, are often found to be the occasion or covert or frauds; it is therefore further declared, That any disposition, or other rights, that shall be granted for hereafter, for relief or security of debts to be contracted for the future, shall be of no force, as to any such debts that shall be found

to be contracted after the seisin or infestment following on the said disposition or right, but prejudice to the validity of the said disposition and right as to other points as accords: And, lastly, His Majesty, and the Estates of Parliament, do hereby statute and ordain, That if any person shall for hereafter defraud his creditors, and be found by sentence of the Lords to be a fraudulent bankrupt, the degree of his fraud shall also be determined by the same sentence, and the person guilty not only held to be infamous, *infamia juris*, but also be by them punished by banishment, or otherwise, (death excepted,) as they shall see cause. And the Lords of Session are hereby discharged to dispense any bankrupt as to the habit, unless, in the summons and process of *cessio*, the bankrupt's falling through misfortune be libelled, sustained and proven; and this but prejudice of all former acts anent bankrupts, which are still to stand in their full force.

The progressive improvement of the bankrupt law appears from the numerous enactments passed in the reign of his late Majesty Geo. III. Under these, the Court of Session sequester the whole property, heritable and moveable, belonging to the debtor; the creditors choose a factor and trustee, who manage the funds under the direction of the Court; and the ranking of creditors, and distribution of the funds, take place by judgments of the Court. As the latest of these statutes contains all the provisions of the former ones, and, though evidently intended only as a temporary measure, regulates practice in the meantime, it will be necessary to quote it entire. A very brief notice of the earlier acts seems sufficient.

Statute 12. of Geo. III. *cap.* 72, “for rendering  
“the payment of the creditors of insolvent debtors more  
“easy and expeditious; and for regulating the dili-



“ gence of the law by arrestment and poinding,” &c. This act was continued by 20. of Geo. III. *cap.* 41.

Statute 23. of Geo. III. *cap.* 18, *inter alia*, “ for rendering the payment of creditors more equal and expeditious in that part of Great Britain called Scotland.” Continued by the following acts, viz. 30. of Geo. III. *cap.* 5 ;—39. of Geo. III. *cap.* 53 ;—44. of Geo. III. *cap.* 24 ;—and 46. of Geo. III. *cap.* 24.

Statute 33. of Geo. III. *cap.* 74, “ for rendering the payment of creditors more equal and expeditious in that part of Great Britain called Scotland.” Continued by the following acts, viz. 48. of Geo. III. *cap.* 25 ;—49. of Geo. III. *cap.* 38 ;—51. of Geo. III. *cap.* 25 ;—and 53. of Geo. III. *cap.* 65.

The present bankrupt statute, 54. of Geo. III. *cap.* 137, “ for rendering the payment of creditors more equal and expeditious in Scotland,” is as follows :

That in all actions and questions arising upon the construction and effect of an act of the Parliament of Scotland, made in the year 1696, intituled, *An Act for declaring Notour Bankrupts*, if any person, subject to the laws of Scotland, shall happen to be forth of that part of the territory of the united kingdom, or not liable to be imprisoned by being in the sanctuary, or by reason of privilege or personal protection, a charge of horning executed against him, together with either an execution of arrestment of any of his effects not loosed or discharged within fifteen days after the date thereof, or an execution of poinding of any of his moveables, or a decree of adjudication of any part of his heritable estate, for payment or security of debt, shall, when joined with insolvency, be held a sufficient proof of legal bankruptcy and equivalent to the description of notour bankruptcy, given in the act of the Parliament of Scotland before mentioned, made

in the year 1696; and it is hereby declared, that such insolvent debtor shall, from and after the period when both the charge of horning against the person, and one or other of the said diligences of arrestment (not loosed or discharged as aforesaid) or poinding have been executed, or decree of adjudication obtained, be holden and deemed a legal or notour bankrupt, and subject to the regulations of the said act in the year 1696, as hereby extended and explained; and every person, whether he be out of Scotland or not, whose estate has been or shall be sequestrated under the authority of any of the acts before recited, or of the present act, shall, in like manner, be holden and deemed a notour bankrupt in all questions upon the act of 1696, from and after the date of the first deliverance on the petition to the Court of Session for awarding the sequestration.

II. And be it enacted, That when a debtor is made legally bankrupt in terms of the said act, made in the year 1696, or of this act, all arrestments which shall have been used for attaching any effects of such bankrupt within sixty days prior to the bankruptcy, or within four calendar months thereafter, shall be ranked *pari passu* in the same manner as if such arrestments had been of the same date; and that, in time coming, letters or precepts of arrestment upon any depending action may be granted summarily, upon production of the libelled summons; and it shall be no objection to the *pari passu* preference hereby established, that the summons upon which any arrestment proceeds was not executed, or that the debt upon which it is founded was not liquidated at the date of the arrestment: Providing always, that these and all other necessary steps are afterwards taken without any undue delay; and in case the first or any subsequent arrester shall in the mean time have obtained a decree of forthcoming of preference, and thereupon shall have recovered payment, he shall nevertheless be accountable for the sum recovered to those who by virtue of this act may be eventually found to have a *pari passu* preference thereon,

and shall be liable to an action at their instance, for payment to them proportionally, after allowing out of the fund the expence of making it effectual; and further providing, that if there be any arrestments used for attaching the same effects after the period of four months subsequent to the bankruptcy, such an arrestment shall not compete with those used prior to or within the period aforesaid, but may rank with one another on any reversion of the fund attached, according to the former law and practice.

III. And be it enacted, That an arrestment executed at the market-cross of Edinburgh, and pier and shore of Leith, to attach the effects of the debtor, as in the hands of a person out of Scotland, shall not be held to have interpellated such person from paying to the original creditor, unless proof be made that he, or those having authority to act for him, were previously in the knowledge of such arrestment having been so used.

IV. And be it enacted, That the messenger or other person employed in executing a poinding for debt, shall leave the poinded goods in the hands of the debtor, with a schedule of the poinded goods, and note of the appraised values, (one appraisement being in every case sufficient,) and shall forthwith report his execution of poinding to the Sheriff, or other judge ordinary, who shall give direction for keeping the goods poinded in safe custody, and selling them by public roup, after such publication, not shorter than eight free days, nor longer than twenty, from and after the day when the order was given, and at such time and place as circumstances may require, and who shall give all necessary orders for intermediate security, any person who intromits with, or carries off the goods in the meantime, in order to disappoint the poinding, being liable in double the appraised value thereof; and a note or minute of the sale, and of the sum arising from it, shall be within eight days of the sale lodged with the clerk to the said Sheriff or judge ordinary, and forthwith marked by him as so lodged, within eight days after such

sale, to be made patent to all concerned for a fee of one shilling, and the next sum arising from such sale, after deduction of all charges, or the goods in case no offerers appear, shall be delivered over to the pouncing creditor.

V. And be it enacted, That when a person has been rendered legally bankrupt as aforesaid, no pouncing of the moveables belonging to such bankrupt used within sixty days before the bankruptcy, or within four calendar months thereafter, shall give a preference to such pouncer, but that every other creditor of the bankrupt having liquidated grounds of debt, or decrees for payment, and summoning such pouncer, or judicially producing the same, in any process or competition relative to the goods or price thereof, before the said four months are elapsed, shall be entitled to a proportional share of the price of the goods so pounced effeiring to his debt, deducting always the expence of such pouncing, which the pouncer shall retain in preference to the other creditors : And providing also, that all pouncings after the four months shall have such preference as they were entitled to by former law and practice ; saving always the landlord's right of hypothec for rents, or any other hypothec known in law, which shall be nowise hurt or impaired by any thing contained in this act : And provided also, that in the case of a sequestration under this act, the *pari passu* preference of arrestment and pouncings shall be regulated as herein after directed.

VI. And whereas an act of the Parliament of Scotland, in the year 1681, chap. 17, intituled, *An Act concerning the Sale of Bankrupts' Lands*, required certain forms of publication and citation, which in practice have been found to be expensive and inconvenient ; and another act of the Parliament of Scotland, in the year 1695, chap. 6, intituled, *Act regulating the Sale and Payment of Bankrupts' Estates*, made it lawful for purchasers of such estates to consign the price, after a certain time, in the hands of the Magistrates and Town-Council of Edinburgh, which method has been found

inconvenient, and has seldom been practised; and by an article in the regulations of the Session established in the same year 1695, section 26, it was provided, that the ranking of the creditors should proceed and be concluded by decree before the sale of the lands, which regulation has generally been prejudicial to the creditors; be it enacted, That the said in part recited acts shall be and the same are hereby in so far repealed; and the Court of Session shall have full power to make acts of sederunt for abridging the forms of publication and citation, and regulating the proceedings in processes of sale, ranking and division, whether at the instance of creditors or of apparent heirs; and in every case of a sale under the authority of the Court of Session, it shall be lawful to the purchaser, at any term of Whitsunday or Martinmas subsequent to the term of payment of the price, to lodge the price, with the interest due upon it, in the Royal Bank, or Bank of Scotland, or the Bank of the British Linen Company, at such interest as can be procured for it, by doing which, and by giving notice thereof to the agent who carried on the sale, he shall be discharged of the said price; and further, the Court of Session, upon the application of any of the creditors, shall be empowered to make an order on the purchaser to lodge the price and interest, at any of the said terms, subsequent to the term of payment, in one or other of the said Banks, sufficient intimation being always previously given both to the purchaser and to the common agent for the creditors, that such application is made, in order that all parties may have an opportunity to object; and in all cases of judicial sales, the lands or other heritable subjects may be brought to actual sale so soon as the necessary previous steps are taken, whether the ranking be concluded or not, unless the Court, upon application of any party concerned, shall find sufficient cause to delay the sale.

VII. And whereas doubts have arisen upon the construction of an act, made in the year 1690, chap. 20, intituled, *Act anent the Sale of Bankrupts' Lands*, in so far as it requires

that the common debtor be found bankrupt and utterly insolvent; be it enacted, That a judicial sale, at the instance of creditors, may in all cases proceed where the interest of the debts and the other annual burdens exceed the yearly income of the subjects under sale, or where a sequestration shall have taken place under this or any former statute, without other proof of bankruptcy or insolvency.

VIII. And whereas by an act of the Parliament of Scotland, in the year 1540, chapter 106, concerning charges to enter heir, and another act in the year 1621, chapter 27, concerning apprisings against heirs, it was ordained, that charges against heirs unentered, which were to be the foundation of apprising against their predecessors' lands, might proceed at the instance of creditors, commanding them to enter within forty days after the charge; but it has been doubted whether the same or a longer term is required when the person charged is out of Scotland, and it is expedient that such *induciæ* should be of long duration; be it enacted, That the *induciæ* of a charge to enter heir shall in no case exceed forty days, whether the person charged be within the kingdom or out of it; and that after one such charge, whether general or special, has been given at the instance of any creditor, every subsequent charge, at the instance of the same or of any other creditor, may be upon the *induciæ* of twenty days only; any law or practice to the contrary notwithstanding.

IX. And, in order to lessen the number of adjudications for debt, and consequently the expence to all parties, and to facilitate the *pari passu* preference of creditors in similar circumstances; be it enacted, That the Lord Ordinary officiating in the Court of Session, before whom the first process of adjudication against any estate for payment or security of debt is called, shall ordain intimation thereof to be made in the minute-book, and on the wall, in order that any other creditors of the common debtor, who at the next calling of the cause can shew that, although they have not exe-

cuted their summonses of adjudication, they are in other respects, by the nature of the grounds of debt, and steps taken by them, in condition to proceed in adjudging their debtor's estate, may produce the instructions of their debts, with summonses of adjudication, libelled and signeted, for the purpose of their being conjoined in the decree of adjudication, twenty sederunt-days being allowed for such intimation before the cause can be called a second time ; and if any of these forms shall happen to be omitted, the said adjudication shall be null and void, without prejudice to its being brought forward again in more due form, or still conjoined with any after adjudication ; and, without prejudice to the validity and order of ranking of posterior adjudications according to the rules of law, when any after process or processes of adjudication are brought into Court, the same shall be regulated, as to the time and manner of proceeding in them, by an act or acts of sederunt of the Court of Session, so as to provide, as far as circumstances will admit, for the *pari passu* preference of such posterior adjudications with one another, and to abridge the number and expence of such proceedings ; and in all cases where penalties for non-payment over and above performance are contained in bonds, or other obligations for sums of money, and are made the subject of adjudication, or of demand in any other shape, it shall be in the power of the Court to modify and restrict such penalties, so as not to exceed the real and necessary expences incurred in making the debt effectual.

X. And be it enacted, That when the estate of a debtor is brought into the Court of Session by process of judicial sale and ranking, the decree of sale to be pronounced by the Court shall be held as a general decree of adjudication in favour of every creditor who shall afterwards be included in the decree of division ; and the effect of such general decree shall be the same in all competitions, or questions of ranking and preference, as if it had been pronounced and extracted of the date of the first calling of the process of

sale before the Lord Ordinary in the Outer-House, and no separate adjudication shall be allowed to proceed during the dependence of a judicial sale, it being hereby declared to be competent to the Court of Session to settle, by an act or acts of sederunt, in what manner, and at what period or periods the principal sums and bygone interests of the debts shall be accumulated, so as to do equal justice to all concerned, but declaring that it shall be competent to any creditor who is in a situation to adjudge, to carry on the action of sale to its conclusion, though deserted or abandoned by the original pursuer.

XI. And, in order to fix more clearly in time coming what diligence is necessary to make an adjudication effectual, be it enacted, That the presenting a signature in Exchequer, when the holding is of the crown, or the executing a general charge of horning against superiors at the market-cross of Edinburgh, and pier and shore of Leith, when the holding is of a subject, and recording an abstract of the said signature, or the said charge in the register of abbreviates of adjudications, shall be held in all time coming as the proper diligence for the purpose aforesaid.

XII. And whereas, by the act before mentioned, in the year 1696, intituled, *Act for declaring Notour Bankrupts*, it is *inter alia* declared, " That all dispositions, heritable bonds, " or other heritable rights, whereupon infeftment may follow, granted by the foresaid bankrupt, shall only be reckoned, as to this case of bankrupt, to be of the date of the " seisin lawfully taken thereon;" but it would be more expedient, that instead of the date of the seisin, the date of recording the seisin in the register of seisins and reversions should be taken as the rule; be it hereby enacted, That in all questions upon the said act, in the year 1696, or this present act, the dispositions, heritable bonds, or other heritable rights, whereupon infeftment may follow, shall in time coming be reckoned to be of the date of the registration of the



seisin lawfully taken thereon, without prejudice to the validity or invalidity of the said heritable rights, in all other respects as formerly.

XIII. And be it enacted, That in all questions upon the said statutes, all dispositions, assignations, and venditions, which do not require seisin, but to which intimation or delivery are requisite, in order to render them complete as transferences or as securities, shall be reckoned to be of the date of the intimation, delivery, or other act requisite for completing the same, without prejudice to their validity in other respects.

XIV. And whereas by another clause in the said act 1696, it is declared, " That any disposition, or other rights that  
" shall be granted for hereafter, for relief or security of debts  
" to be contracted for the future, shall be of no force, as to  
" any such debts as shall be found to be contracted, after  
" the seisin or infeftment following on the said disposition  
" or rights;" but it would tend not only to the benefit of commerce, but also of agriculture and manufactures, if securities by infeftment for the payment or relief of future balances arising upon cash accounts or credits, or of sums paid on such cash accounts or credits, were made an exception from the rule laid down in the said recited clause; be it therefore enacted, That it shall and may be lawful for any person or persons, possessed of lands or other heritable subjects, and desiring to pledge the same in security of any sums paid or balances arising, or which may arise upon cash accounts or credits, or by way of relief to any person or persons who may become bound with him or them for the payment of such sums or balances, although posterior to the date of the infeftment, to grant heritable securities accordingly upon their said lands or other heritable estate, containing procuratory of resignation and precept of seisin for infefting any bank or bankers, or other persons who shall agree to give them such cash accounts or credits, or for infefting such

persons as shall become cautioners for them, or jointly bound with them in such cash accounts or credits: Provided always, that the principal and interest which may become due upon the said cash accounts or credits, shall be limited to a certain definite sum, to be specified in the security, the said definite sum not exceeding the amount of the principal sum, and three years' interest thereon, at the rate of five *per centum*; and it is hereby declared, that it shall and may be lawful to the person to whom any such cash account or credit is granted, to operate upon the same, by drawing out and paying in such sums from time to time as the parties shall settle between themselves, and that the seisin or infeftments taken upon the said heritable securities shall be equally valid and effectual, as if the whole sums advanced upon the said cash account or credit had been paid prior to the date of the seisin or infeftment taken thereon, and that any such heritable security shall remain and subsist to the extent of the sum limited, or any lesser sum, until the cash account or credit is finally closed, and the balance paid up and discharged, and the seisin or infeftment renounced; any thing to the contrary in the said recited act notwithstanding.

XV. And whereas it is for the interest of commerce, that the estates of those concerned in trade and manufactures, when they become unable to answer the demands upon them, should be disposed of and distributed among their creditors in the most expeditious manner, without abiding the ordinary forms of law; be it enacted, That from and after the passing of this act, if any person being a merchant or trader in Scotland, in gross or by retail, or a banker, broker, or underwriter, or a manufacturer, or artificer, and in general any person who, either for himself, or as agent or factor for others, seeks his living by buying and selling, or by the workmanship of goods or commodities, or by any of the foregoing occupations, or holds a share in any such undertaking, shall be under legal diligence by horning and caption against him

for debt, and shall either, in virtue thereof, be imprisoned, or retire to a sanctuary, or fly or abscond for his personal safety from such diligence, or defend his person by force, or being out of Scotland at the time, or not liable to be imprisoned by reason of privilege or personal protection, shall be under diligence by charge of horning attended with arrestment executed of any part of his moveable estate or effects, and not loosed or discharged by the debtor within fifteen days thereafter, or with poinding executed of any part of his moveables, or decree of adjudication of any part of his heritable estate for payment or security of debt, at the instance of any of his creditors, it shall be lawful for any creditor of the said person, whose debt shall amount to the sum of £. 100 Sterling, or any two creditors whose debts shall amount to the sum of £.150 Sterling, or any three or more creditors whose debts shall amount to the sum of £.200 Sterling or upwards, whether such debts are liquidated by formal vouchers, or stand upon open account, at any time within four calendar months of the last step of the said diligence, to apply, by summary petition to the Court of Session, for sequestration of the said debtor's estate, heritable and moveable, real and personal ; and upon production of the grounds of debt, or a copy of the account, signed by the party to whom it is due, and a deposition by the creditor or creditors at whose instance the application is made, taken before any Judge-Ordinary, or Justice of the Peace, swearing to the verity of the debt or debts, and also that they believe the party against whom the application is made to be a merchant, or otherwise within one or other of the descriptions aforesaid, and always specifying which description, the Court shall grant warrant for citing the said debtor, by delivering to him personally, or by leaving at his dwelling-house, a copy of the said petition ; or, if the said debtor be forth of Scotland, by affixing copies upon the market-cross of Edinburgh, pier and shore of Leith, and also leaving a copy at the dwell-

house or house of business in Scotland, last occupied by such debtor, to appear in Court within the time specified in the warrant of citation, not being less than six nor more than forty days from the date of the citation, to shew cause why sequestration should not be awarded; and at the time of granting such warrant of citation, the Court shall likewise, if desired, grant the usual authority, at the instance of the petitioners, for recovering written evidence of the said steps of diligence; and upon production of such evidence at the diet of appearance, if the debtor shall not appear either in person, or by his counsel or agent, or so appearing shall not instantly pay or produce written evidence of the debt or debts being satisfied upon which the diligence proceeded, and also pay or satisfy the debt or debts due to the petitioner or petitioners, or to any other creditor or creditors who may have appeared and concurred in the application, or shew other reasonable cause why the sequestration should not proceed further, the Court shall immediately award sequestration of the said debtor's whole estate and effects, heritable and moveable, real and personal, for the benefit of his whole just and lawful creditors; declaring always, that it shall not be a sufficient ground for awarding sequestration under this act, that the debtor is a holder of stock in any of the public or national funds, or of India stock, or of stock in any of the banks established by public authority, or in any insurance company against fire, or in the Forth and Clyde Navigation Company, or other inland navigation company, or the British fisheries, or that he is a common labourer or workman for hire, unless such person shall be otherwise *bona fide* under one or other of the foregoing descriptions; and that no landholder or tenant of land shall as such be liable to have his estate sequestrated, even although he deal in cattle or grain, unless he shall *bona fide* be of the description of a trader in these articles, gaining or seeking to gain his livelihood, or a material part thereof, by dealing in cattle not the

produce of, nor grazed upon, or made use of in the labour of his farm, or in grain not produced thereon.

XVI. And be it enacted, That the Court shall, by the same deliverance which awards the sequestration, make an order upon the creditors to meet upon a certain day and hour, being not more than three weeks from that date, and as much sooner as circumstances may permit, in order to name an interim factor, if they think fit to appoint one, or failing their doing so, to devolve the interim care and custody of the effects upon the Sheriff-clerk of the county where the bankrupt carried on his business; and the Court shall, by the same deliverance, make another order upon the creditors to meet upon a certain day and hour, to be named by the Court in the said deliverance, being not more than four weeks, and less than two weeks from the day of such first meeting, for the purpose of naming a trustee, in whose person the said estate shall be vested, as herein after mentioned; the said meetings to be at a convenient place, either where the bankrupt resides, or where his business is or was last carried on, or as near it as possible, the place being also specified; which deliverance the petitioning creditor or creditors shall forthwith cause to be advertised in the paper called the Edinburgh Gazette, and also in the London Gazette, otherwise the whole proceedings at those meetings to be null and void; and the Court shall at the same time grant commission to any resident magistrate of the burgh, or to the Sheriff depute or substitute of the county where the meeting is to be held, or failing them, any Justice of the Peace of the county, to attend the said first meeting of creditors, and to receive their grounds of debt, with the oaths of verity thereon after mentioned, and to sign the minutes of the creditors along with the preses chosen by them; and all questions at this meeting shall be determined by a majority of the creditors in value or extent of debt, (subject however to the explanation after mentioned,) appearing at the said

meeting by themselves, or others authorised by them, and whose grounds of debt and oaths thereon are so produced; and it shall be in the power of the Sheriff depute or substitute, upon cause shewn by any of the creditors, at any time after the sequestration, and before the meeting for the choice of the factor, to seal up, and cause to be put under safe custody, the books and papers of the bankrupt, and to lock up his or her shop, warehouse, or other repositories, and to keep the keys thereof till a factor is named, or the custody and care devolved upon the Sheriff-clerk, subject in the mean time to such orders and directions as either the Court of Session or the Sheriff may think proper to give, on the application of any party concerned, for the preservation of the effects.

XVII. And be it enacted, That the said factor or Sheriff-clerk, chosen as interim manager, shall be entitled to take possession of the bankrupt's whole estate and effects, and of the bills, notes, and whole other vouchers, title-deeds, and instructions of his estate, and also of his books and papers; and the bankrupt shall, if required by him, or by the creditors, grant powers of attorney, or other deeds which may be deemed necessary or proper for the recovery of the estate and effects situate in foreign parts, under the pain of fraudulent bankruptcy, and of being deprived of all benefit from this statute; and the factor shall lodge all monies received by him in such bank, or with such banking company, as the creditors present at the meeting at which he shall have been chosen shall appoint; and failing such appointment, in the Royal Bank, or Bank of Scotland, or the Bank of the British Linen Company, at such interest as can be procured for the same, upon an account to be opened in the name of the sequestrated estate; and the said factor, if required, shall find security for his intromissions to such extent as the said majority shall think reasonable, he, or failing him, the Sheriff-clerk, being always entitled to a gratification for trouble,

to be fixed by a majority of the creditors in value, assembled at any general meeting, subject to the modification of the Court of Session; and the said factor or Sheriff-clerk shall engross the minutes of the meeting at which he is appointed in a book of sederunt properly authenticated, which shall be kept by him as his warrant for acting; and the principal minutes of the said meeting, being signed by the magistrate and by the preses of the meeting, and by the said factor or Sheriff-clerk, shall be transmitted by them to the clerk of the sequestration, to be kept among the records of the Court of Session.

XVIII. And be it enacted, That if any merchant or other person described as above, and not within the exceptions, whether diligence has been executed against him or not, shall make a joint application to the Court of Session, along with any creditor whose debt shall amount to the sum of £.100 Sterling, or any two creditors whose debts shall amount to the sum of £. 150 Sterling, or any three or more creditors whose debts shall amount to the sum of £. 200 Sterling or upwards, whether such debts be liquidated, or stand upon open account, and oath being made as above to the verity of these debts, and the parties or their agent also making oath, to their knowledge or belief, of the debtor's being within one or other of the descriptions, and specifying which description, and not within the exceptions aforesaid, the Court is hereby authorised and required to award sequestration of the debtor's estate, heritable and moveable, real and personal, and the procedure shall go on as before directed.

XIX. And be it enacted, That no sequestration shall be awarded against any person having an estate or effects in Scotland, who at the time of the application does not either reside, or has a dwelling-house or house of business there, or at least had such residence or dwelling-house or house of business within a year previous to the application, unless the

debtor himself, or those legally authorised to act for him, concur in the application.

XX. And be it enacted, That the estates of all copartnerships carrying on business under any of the denominations or descriptions above set forth, and not within the exceptions, may be sequestrated upon the application either of those entitled to act for them, with consent of any creditor of such partnership whose debt amounts to the sum of £.100 Sterling, or any two creditors whose debts amount to the sum of £.150 Sterling, or any three or more creditors whose debts amount to the sum of £.200 Sterling or upwards, or at the application of such creditor or creditors themselves, whose debts are to the amount already mentioned, in which last case it must appear that diligence has been done against one or more of the partners for payment of a partnership debt, in the same way and manner as is before required to found an application against individuals; and in either case, the procedure hereby directed with regard to individual debtors shall be followed out, and it shall be sufficient to cite the partnership, by leaving a copy at the house or shop where their business is or was carried on, or where any of their acting partners reside; and if the said house and shop be shut up or deserted by them, a copy shall also be affixed at the market-cross of Edinburgh, and pier and shore of Leith.

XXI. And whereas it is often attended with great inconvenience that latent partners of a company do not come forward, but remain unknown when the sequestration of a company's estate is awarded, it is hereby enacted, That any partner of a company, whose name does not appear as such in the books of the company, or who shall not come forward and acknowledge himself as a partner, on or before the day appointed for the first examination of the bankrupt partners, or any of them, such person shall not be entitled to any of the benefits or privileges of this act, in case it shall afterwards be discovered that he was truly a partner in that con-



cern, unless he can make it appear to the satisfaction of the Court, that this omission proceeded entirely from innocent mistake or ignorance of the proceedings, or from a reasonable misconception of his liability as a partner, and shall then follow out all necessary steps under the direction of the Court, for remedying as far as possible the loss and inconvenience thence arising.

XXII. And be it enacted, That the party applying for the sequestration, whether the creditor or creditors alone, or the bankrupt, with concurrence of a creditor or creditors, shall cause the petition of sequestration, and the first deliverance thereon, to be recorded in the general register of inhibitions, within fifteen days after the said deliverance is pronounced, and the same shall, from the date of the deliverance, be held equivalent to an inhibition, and to a citation in an adjudication against the debtor and his property for behoof of the whole creditors, in case the sequestration is finally awarded, but the proceedings shall be of no effect as an inhibition, or as a citation in an adjudication, if such registration be omitted; and it shall not be in the power of the bankrupt, after sequestration is awarded, to stop proceedings, by paying off the debt on which the diligence and petition did proceed; and in case of any undue conduct or neglect in these particulars, or with regard to publishing the advertisements before directed, whereby other creditors may sustain a loss, the petitioning creditor or creditors, and those acting for them, shall be liable in all damages arising from such undue conduct or omission: Provided always, that if the debtor against whom sequestration has been awarded without his own concurrence, or if any creditor, who has not concurred in, or consented to, the application, shall apprehend that the party against whom it is awarded does not come within the description before given, or falls under any of the exceptions therefrom, or that there is any other good ground for recalling the sequestration, and annulling the

whole proceedings, such debtor or creditor shall be at liberty, at any time within sixty days after sequestration is awarded, to apply to the Court of Session, setting forth the grounds upon which the sequestration ought to be recalled; and this petition being intimated to the party or parties at whose instance the sequestration was obtained, or their known agent, and a reasonable time given to make answers thereto, and to adduce the necessary proofs on either side, the Court shall determine upon the same, and either recall or confirm the sequestration, as the justice of the case may require; but in the mean time, until this matter is finally determined, the proceedings under the sequestration shall go on as if no such application had been made.

XXIII. And be it enacted, That at the general meeting for choosing a trustee, the interim factor or Sheriff-clerk shall exhibit the book of sederunt containing the minute of his appointment, together with a state of his intromissions, and the books and papers in his possession, which state shall be engrossed in the said book of sederunt, and the majority of creditors in value or extent of debt present at this meeting shall determine who is to be trustee; but no creditor shall be entitled to a vote at this or any future meeting, who has not, either then or formerly, exhibited not only an oath of verity on his debt, but also the grounds or vouchers thereof; and at the said or any other meeting, it shall be lawful for agents or attornies having commissions, either general or special, from any of the creditors, to appear and vote in all matters wherein their constituents themselves, if present, might have voted; and the creditors may choose two or more trustees to act in succession, one failing another by death, resignation, or removal, but only one trustee shall act at a time; and in no case shall it be competent to the creditors to appoint as trustee, either the bankrupt himself, or any person who, with respect to him, is by the law of Scotland held to be conjunct or confident; neither shall it

be competent to the creditors to appoint as a trustee any person whose place of residence shall be without the jurisdiction of the Court of Session ; and if any person who has been elected a trustee shall remain at any time for three calendar months forth of Scotland, it shall be competent to the creditors, at any general meeting called for that purpose by any of the commissioners herein after mentioned, by advertisement inserted in the Edinburgh Gazette, fourteen days before the said meeting, to apply to the Court of Session for the purpose of the creditors being authorised to declare the appointment of the said trustee either suspended or at an end, and to appoint the trustee next in succession, or if there be no trustee chosen to act in succession, to choose a trustee for the purpose of managing the affairs of the bankrupt ; and the Court shall thereupon, upon cause shewn, authorise the creditors to make either an interim appointment, or such an appointment of a trustee as shall appear to be proper.

XXIV. And be it enacted, That no person whose claim upon the bankrupt estate is merely contingent, or depending upon an uncertain condition, shall be entitled either to join in the petition above mentioned for sequestration, or to vote in the choice of factor or trustee, or in the other steps of proceeding herein specified ; and that any creditor who holds a preferable security or lien upon the debtor's property, or has other obligants bound with him, except where the common debtor in this last case is the principal or primary obligant, and liable to relieve the others, shall be obliged upon oath to put a value upon such security or collateral obligation, so far as he may thereby be covered, and to deduct such value from his claim, and to give his vote in all matters respecting the bankruptcy as creditor only for the balance, which balance shall be specified in his affidavit, without prejudice to his correcting his valuation afterwards, and without prejudice to the amount of his debt in other respects.

XXV. And be it enacted, That at the said meeting for

choosing a trustee, the bankrupt shall exhibit, or cause to be exhibited, a state of his affairs, specifying the whole estate and effects, heritable and moveable, real and personal, wherever situated, belonging to him, and debts due to him, including any estate in expectancy, which he may have an eventual right to by contract of marriage, entail, or otherwise, and specifying also the debts due by him, or demands upon him, so far as they are known to him, and also a rental of his lands, and an inventory or list of his books, papers, accounts, notes, bills, and title-deeds, or other documents of his estate; which state, rental and inventory shall be engrossed in the sederunt book, the same being duly authenticated by the preses of the meeting, who shall deliver the said book of sederunt, and the title-deeds of the heritable estate, to the trustee so named, and shall deliver the other papers to the interim factor or Sheriff clerk, to be kept by him until the same are duly taken off his hands by the trustee, upon being discharged of his intromissions, and satisfied of all demands which he has against the estate, for advances of money, commission, or trouble.

XXVI. And be it enacted, That so soon as the said trustee shall have declared his acceptance, and found security for his intromissions and faithful management, to the extent required by the majority of the creditors in value at the aforesaid meeting, the minutes of the said meeting shall be reported to the Court of Session by the trustee, a copy of them being previously entered in the sederunt-book; and if no good objection is made to the trustee, his nomination shall be confirmed, and he shall then have a right to call for, and take into his custody, all books, accounts, vouchers of debt, securities, and other papers and documents relative to the estate or to the affairs of the bankrupt, and to account with and discharge the interim manager, and likewise to take such legal steps as may be effectual for recovering the possession of the estate and effects, wherever situated, he being

always entitled to a reasonable allowance or commission for his trouble, to be fixed by the commissioners herein after mentioned, previous to each dividend.

XXVII. And be it enacted, That in case any question shall arise as to the election, either of the interim factor, or of the trustee, the same shall be reported to the Court of Session; and it shall be competent either to the Court in time of session, or to the Lord Ordinary on the Bills in time of vacation, to decide in the most summary manner on the merits of such election.

XXVIII. And be it enacted, That in such case the unsuccessful party claiming to have been elected interim factor or trustee shall pay the expenses of the proceeding; and no part of the expenses of either party shall be paid out of the bankrupt estate; save and except in the case of the Sheriff-clerk, with reference to whose expenses the Court shall and may give such directions, and make such order as to them shall seem fit.

XXIX. And be it enacted, That the nomination of the trustee being thus reported and approved of, the Court shall at the same time ordain the bankrupt to execute and deliver, within a certain reasonable time to be specified in the interlocutor, a disposition or other proper deed or deeds of conveyance or assignment, making over to the said trustee or trustees, in their order, his whole estate and effects, heritable and moveable, real and personal, wherever situated, and which shall specially describe and convey the premises so far as they are known, or so far as the trustee shall think it necessary, and be in such form and style as may effectually vest the right in him, with full powers of recovery and sale, for behoof of the creditors; and if the bankrupt shall, without reasonable cause, neglect or refuse to obey such order, the Court may punish him by imprisonment; and in all events, whether such deed or deeds be executed or not, it is hereby declared and enacted, That the said whole estate and

effects, of whatever kind, and wherever situated, (in so far as may be consistent with the laws of other countries, when the effects are out of Scotland), shall be deemed and held to be vested in the said trustee or trustees in succession, for behoof of the creditors; and the Court shall, in the act or order above mentioned, declare every right, title, and interest, which was formerly in the bankrupt, to be now in the trustee for the purposes aforesaid, and particularly shall adjudge, decern, and declare the whole lands, and other heritable estate belonging to the bankrupt, within the jurisdiction of the Court, and which, as far as known, shall be especially enumerated and described, to pertain and belong to the trustee or trustees in succession, absolutely and irredeemably, to the end that the same may be sold, levied, and recovered, and converted into money for payment of the creditors; which adjudication, being in the nature of an adjudication in implement, as well as for payment, or security of debt, shall be subject to no legal reversion: Declaring always, that if any part of the bankrupt's property happens to be entailed, or otherwise of a limited nature, the conveyance to be executed by him, or the decree of adjudication to be obtained by the trustee, shall only be understood to carry that right and interest in the estate which the bankrupt himself has, and can safely convey, and which his creditors can validly attach.

XXX. And be it enacted, That the trustee shall cause the act or order aforesaid, adjudging the estate of the bankrupt, to be recorded, within fifteen days of the date thereof, in the register of abbreviates of adjudications, in the said manner, and to the same effect, that abbreviates of adjudications must be recorded; and this being done, the trustee shall be entitled, for behoof of the whole creditors, to rank in the same manner upon the heritable estate, as if it had been a common decree of adjudication obtained, and rendered effectual at the date of the first deliverance on the peti-

tion for sequestration, accumulating the whole debts of the bankrupt, principal and interest, as at that period, and adjudging for security or payment thereof, so as to rank *pari passu* with any prior effectual adjudication within year and day of the same ; and it shall further operate as a complete attachment and transfer of the moveable or personal estate for behoof of all the creditors, at the date of the first deliverance aforesaid, without the necessity of intimation ; and the said disposition, adjudication, or transfer, shall not be reducible upon any ground of law, nor struck at by any prior inhibition ; saving always the effect which such inhibition may be entitled to in the ranking against contractions of debt by the bankrupt posterior to the inhibition : And provided always, that the same disposition or adjudication of the heritable estate by the act or order of the Court, or any adjudication in name of the factor or interim manager during the dependence of a judicial sale, shall have no effect upon any question of succession between the heir and executor of the creditor.

XXXI. And it be enacted, That upon the said disposition or decree of adjudication the feudal titles requisite by the law of Scotland to vest heritable property shall and may be made up, either in the person of the trustee, or in the person of the purchaser from him, in virtue of such trustee's conveyance, agreeably to the forms of the law of Scotland ; and each trustee succeeding a prior trustee through death, resignation or removal (unless substituted at the first nomination, in which case no other form is necessary,) shall be vested in the right, either by disposition from the former trustee, or by adjudication obtained by the new trustee, on a summary application to the Court of Session as before mentioned ; and the superior shall, if required, be obliged to enter the trustee or trustees, or purchaser, in the same manner as he is directed by an act made in the twentieth year of his late Majesty's reign, for abolishing wardholdings ; and if the trustee shall afterwards discover any other heritable estate

belonging to the bankrupt, and which belonged to him at the date of the first deliverance aforesaid, the same shall, on an application to the Court of Session by the trustee, be adjudged in manner before directed, and to the same effect; and in case the bankrupt's own titles to any part of the estate heritable or moveable, real or personal, which belonged to him at that period, or to which he had then succeeded as apparent heir, nearest in kin, or otherwise, to any predecessor, have not been so completed as to vest a right properly in him, the trustee shall take the most safe and eligible method of completing the bankrupt's title in such way and manner as the law requires, which title shall accresce to that already acquired by the trustee, in the same way as if it had been completed prior to the disposition by the bankrupt, or adjudication against him; declaring that the rules of preference or ranking between the creditors of the ancestor and those of the heir by the law of Scotland, are not meant to be altered by any thing contained in this act.

XXXII. And be it enacted, That within eight days after the appointment of the trustee is confirmed by the Court of Session, he shall apply to the Sheriff of the county where the debtor resides, or where his business was carried on, who is hereby authorised and required to name one day, not being less than fourteen days, nor more than three weeks, from the date of the application, and another day, being not less than fourteen days, nor more than three weeks, after the first day so named, for the public examination of the bankrupt upon the state of his affairs, and all circumstances relative thereto, in the Sheriff court house of the district, or such other place as the Sheriff shall think proper to appoint, a fee of one guinea each sitting being allowed to the Sheriff depute or substitute who officiates; and the trustee may also, if he finds it necessary for the purpose of obtaining a full discovery of the bankrupt's estate and effects, insist for an examination of his wife, and others of his family,



or connected with his business, upon all proper interrogatories, which examinations are to be taken upon oath (if required) before the Sheriff, at one or other of the said diets, or upon any intermediate day; and after the said diets are fixed, the trustee shall immediately publish an advertisement in the Edinburgh Gazette, and in the London Gazette, intimating to the creditors his appointment as trustee on the bankrupt estate, the two days fixed for the examination of the bankrupt, and that on the first lawful day immediately succeeding the last of these examinations, a meeting of the creditors is to be held at the same place, and requiring the creditors to produce, in the trustee's hands, their claims and vouchers or grounds of debt, with their oaths on the verity thereof, at or previous to the said meeting, if not already produced, and farther intimating, that unless the said productions are made between and a certain day specified in the advertisement, being ten months after the date of the first deliverance on the petition for sequestration, the party neglecting shall have no share in the first distribution of the debtor's estate under the exceptions afterwards provided for; and the Sheriff depute or substitute shall, if necessary, issue his warrant for apprehending the bankrupt, or any of his family, or others connected with his business, who are to be examined within his jurisdiction, in order to force their appearance at the diets of examination, or if they be without his jurisdiction, the Court of Session shall, on the application of the trustee, grant such warrant for apprehending and bringing them before the judge who is to take the examination as aforesaid; and if any of these persons shall happen to be indisposed or otherwise unable to attend at that time in the place appointed for examination, the Court of Session, or the Sheriff, may give the necessary directions for examining them elsewhere, and it shall be competent for the trustee to apply at any time for re-examining them, or for examining such persons of the above description as have not

already been examined, upon due advertisement given in manner aforesaid; and the Court of Session shall likewise, in case it be necessary, grant a personal protection to the bankrupt on the application of the trustee, for such time as may be requisite for enabling him to attend the diets of examination, or may grant warrant to messengers at arms, or other officers of the law, to bring his person out of prison, or the sanctuary, in order to attend such meetings, and thereafter to carry him back.

XXXIII. And be it enacted, That at the said examinations the bankrupt shall be allowed to make such additions to or alterations upon the state of his affairs exhibited at the meeting when the trustee was chosen, as may have occurred to him since the said meeting, and are necessary to be set forth to give a perfect view of his affairs; and the said additions and alterations shall also be engrossed in the book of sederunt, with the whole examinations of the bankrupt, and subscribed by the judge examiner and by the bankrupt, and likewise by the trustee; and at the last of the two diets appointed for his examination, the bankrupt shall take and subscribe the following oath :

“ I do, in the presence of Almighty God, and as I shall  
 “ answer to God at the great day of judgment, solemnly  
 “ swear, That the state of my affairs, engrossed in this book,  
 “ contains a full and true account of all the debts of what-  
 “ ever nature due to me, and of all my estate and effects,  
 “ heritable and moveable, real or personal (the necessary  
 “ wearing apparel of myself, my wife, and family, excepted,)  
 “ as well as of all claims which I am entitled to make against  
 “ any person or persons whatsoever, and of all estate in  
 “ expectancy, or means of whatever kind, which I have an  
 “ eventual right to by contract of marriage, deed of entail  
 “ or otherwise, to the best of my knowledge; and that the  
 “ said state likewise contains a full and true account of all  
 “ debts due by me, or demands upon me, so far as I know or

“ can remember ; and that I have delivered up the whole  
“ books, documents, accounts, and papers, of every kind,  
“ belonging to me, which in any way relate to my affairs,  
“ and which were in my possession or under my power,  
“ and have made a full disclosure of every particular relat-  
“ ing to my affairs ; and further I swear, that I shall forth-  
“ with reveal all and every other circumstance or particular  
“ relative to my affairs, or which may tend to increase or  
“ diminish my estate, or in which my creditors may be in-  
“ terested directly or indirectly, which may at any time  
“ hereafter come to my knowledge. So help me God.”

And if the person thus called upon is a copartner with others, and examined respecting the partnership affairs, the words of the said oath shall only be varied by the judge as to make it applicable to the case ; which oath being annexed to the proceedings in the book of sederunt, shall also be subscribed by the Sheriff depute or substitute ; and if the bankrupt be one of the people called Quakers, it shall be sufficient to take his solemn affirmation upon the matters contained in the said oath, and likewise in all other cases where an oath is required by this statute ; and all persons convicted of taking the above oath or affirmation falsely, shall be held as guilty of perjury, and of fraudulent bankruptcy, and punished accordingly, and for ever rendered incapable of holding any office of public trust or emolument ; declaring also, that if the bankrupt shall wilfully fail to exhibit a fair state of his affairs, or to make oath in the terms above specified, or to make a complete surrender, he shall be considered as a fraudulent bankrupt, and punished accordingly, and rendered ever after incapable of holding any office of public trust or emolument ; and in either case shall forfeit every benefit or privilege arising from this present act, and be accounted infamous, and incapable of giving evidence in any court of justice, or of sitting or acting on any assize or jury.

XXXIV. And be it enacted, That the creditors assem-

bled at a meeting to be held fourteen days after the last examination of the bankrupt, or on the first lawful day after expiration of the said fourteen days, shall examine into the state of the bankrupt's affairs, and into the proceedings, which till then have been held, and shall give directions to the trustee for the recovery and disposal of the bankrupt's estate, and the trustee shall be obliged to follow the directions and rules prescribed by a majority in value of the creditors assembled at this meeting, or at any after meeting, called for the purpose, as after directed; and at the said meeting, after the last examination, the majority in value of creditors present shall also name any three of the creditors as commissioners for the purpose of auditing the trustee's accounts, settling his commission, concurring with him in submissions and compromises, and giving their advice and assistance to him in any other matters relative to the management of the bankrupt or trust estate, subject always to the control of general meetings; and in case of any dispute about the election of these commissioners, the same shall be reported to and summarily advised by the Court of Session or Lord Ordinary on the Bills, in the manner before directed as to the election of interim factor and trustee.

XXXV. And be it enacted, That it shall and may be lawful for such commissioners to meet at any time they may think fit, for the purpose of ascertaining the situation of the bankrupt estate, and of examining the acts and transactions of the trustee, and to make such reports as they or any one of them may think proper to make from time to time, to a general meeting of the creditors which they or any one of them may call by advertisement in the Edinburgh Gazette, upon fourteen days' previous notice,

XXXVI. And be it enacted, That at such general meetings held after the last examination of the bankrupt, there shall be exhibited a state of the bankrupt's estate made up by the trustee, with an estimation or valuation of what he

expects at the time it will produce, according to the best of his judgment, upon the information procured from the bankrupt or otherwise ; which state shall be inserted in the sederunt-book, and signed by the preses of the meeting.

XXXVII. And be it enacted, That a similar state and estimate, or valuation, shall be made out by the trustee, and exhibited to the commissioners once in every three months thereafter, shewing the debts and effects recovered, and those remaining outstanding at the time when each such state shall be made up ; and every such state shall be inserted in the sederunt book, and signed by the commissioners ; and when notice of a dividend is given, it shall also be notified in the advertisement or notice, that such state or states, as well as the state of the ranking of the creditors, are lying in the hands of the trustee for the inspection of the creditors.

XXXVIII. And be it enacted, That the whole estate and effects, of whatever kind, belonging to the bankrupt at the period of the sequestration, or the produce thereof, after paying all charges, shall be a fund of division among those who were his creditors prior to the date of the first deliverance aforesaid, and none else, regard being had to preferences obtained by securities, or by diligence, before the said deliverance, and not expressly set aside by this act, but to no other claims of preference ; and all payments made by the debtor to any of his creditors after the date aforesaid, shall be void and ineffectual to the receivers in the event of a sequestration taking place, and the trustee shall be entitled to recover the money so paid as part of the bankrupt's estate ; and all transactions of the bankrupt subsequent to the said date, from which any prejudice may arise to the creditors, shall be null and void ; declaring always, that nothing herein contained shall oblige a *bona fide* purchaser of any part of the moveable effects from the bankrupt, while in actual possession, and for a price truly paid, to restore the effects so purchased, nor the debtor of a bankrupt who has paid his debt to him, *bona*

*fide*, before he knew of the bankruptcy, to pay it a second time to the trustee.

XXXIX. And be it enacted, That if posterior to the sequestration, any estate or effects shall devolve upon the bankrupt, either in the way of succession, or otherwise, he shall be obliged, immediately when such event happens, to make a full discovery thereof to the trustee ; and shall at all times, when required by the trustee, declare upon oath before the Judge-Ordinary, or any Magistrate or Justice of Peace, whether any such estate or effects have come to or devolved upon him, in order that the trustee may have an opportunity of taking such steps as are necessary or proper for the interest of his constituents ; and the trustee shall likewise give notice thereof to the creditors, either at the next general meeting, or by advertising a meeting for the purpose.

XL. And be it enacted, That no arrestment of the bankrupt's effects used at any time within sixty days before the date of the first deliverance on the petition for sequestration, shall give a preference to the arresting creditor in the event of sequestration taking place, but that in every such case the effects arrested shall be made forthcoming to the trustee ; and in case they have been actually recovered by the arresting creditor, the trustee shall nevertheless be entitled to demand and receive the same from him as part of the fund of division, in the same way as if the arrestment had been used for the creditors at large ; and in like manner no poinding of a debtor's effects, not completely executed sixty days at least before such deliverance, shall give any right or preference to the poinder in the event of sequestration taking place, but the poinder shall be obliged to deliver to the factor or trustee the goods poinded, if not sold or disposed of, when he is required so to do ; and in case they are then sold or disposed of, he shall pay, or cause to be paid to the trustee, the whole net price of the goods poinded, and which shall make part of the fund to be distributed among the creditors :

Provided always, that all arresters and poinders, who shall be deprived of the benefit of their respective diligences in consequence of a sequestration, shall be entitled to demand or retain the expense *bona fide* laid out by them in prosecuting such diligences.

XLI. And be it enacted, That the trustee shall proceed to recover and convert into money, in the speediest and most effectual manner, the whole estate under his management or power, whether at home or in foreign parts, in order that the same may be distributed among the creditors; and he shall, if required at any time by one-fourth of the creditors in value, who have produced and proved their claims, be obliged to call a general meeting, or he himself may, on any emergency, call such meeting, sufficient previous intimation of every occasional meeting, and the purpose of calling it, being always given by advertisement in the Edinburgh Gazette and London Gazette, a fortnight at least before the meeting; and all resolutions of the creditors at their general meetings shall be final and conclusive, unless objected to and complained of by a petition to the Court of Session, within thirty days after the meeting.

XLII. And be it enacted, That if any part of the sequestrated estate consists of land or other heritable subjects, it shall be optional to a majority of creditors in value to determine, at the meeting aforesaid, held after the last examination of the bankrupt, or any other meeting advertised for the purpose, whether the trustee is to bring the said heritable estate to judicial sale before the Court of Session, or to dispose thereof by voluntary public sale; and if the latter mode is adopted, the sale made after such advertisement, and at such upset price, and upon such articles and conditions as shall be fixed by a majority of the said commissioners, shall be valid and effectual, with and under the burden of all real securities or other liens upon the estate, in so far as the same are preferable to the disposition or decree vesting the said

estate in the trustee, but which burden shall go no farther than to the extent of the price ; and the purchaser shall have no concern with the application of the price after satisfaction of the preferable securities aforesaid ; and if a majority of creditors in value determine for a judicial sale, the trustee shall be obliged forthwith to proceed in the same, and shall be entitled to carry it on as to a part of the estate, without including the whole, and without any other proof of bankruptcy than the act of sequestration ; and it shall be enough to call the bankrupt himself, and his real creditors in possession, upon a citation of fifteen days, whether they are within the kingdom or not, and the edictal citations shall be dispensed with : Provided always, that nothing in this act contained shall bar the right which any real creditor may have by the law, as it stands at present, to bring his debtor's estate to a judicial sale at his own instance, unless such sale has been previously brought at the instance of the trustee, or unless a majority of the creditors in value shall have previously determined upon a voluntary sale ; and in the event of the estate being sold by judicial sale, the balance of the price, if there be any, after satisfying the preferable securities aforesaid, shall be paid into the hands of the trustee, as a part of the fund of division to be made by him among the creditors in general, the purchaser being always entitled, upon making full payment of the price, whether the lands have been sold in the one way or in the other, to a discharge from the trustee, which shall have the effect completely to disencumber the subject acquired ; and further the creditors shall be entitled to draw their shares of the price in virtue of the disposition and adjudication before mentioned, without the necessity of any other adjudication ; and no other adjudication led or made effectual after the date of the first deliverance aforesaid, shall have any effect in competition with the right of the creditors under the sequestration : Provided always, that where heritable property belonging to the bankrupt, after ha-



ving been duly advertised for sale, shall have been three times exposed to judicial or public sale without effect, it shall be competent to the trustee, with consent of a majority of the commissioners, and with the approbation of a general meeting of the creditors called for the purpose, to sell the said heritable property by private sale, provided the price at which it shall be sold shall not be less than the last upset price at which it had been exposed to public sale without effect.

XLIII. And be it enacted, That the trustee shall be obliged to lodge all money he receives in such bank, or with such banking company, as four-fifths of the creditors in number and value at any general meeting shall appoint, and failing such appointment, in the Royal Bank or Bank of Scotland, or in the Bank of the British Linen Company, upon an account to be opened in the name of the sequestrated estate, at such interest as can be procured for the same, and never to retain in his own hands above the sum of £.50 Sterling for the space of ten days, otherwise to be liable to the creditors for twenty *per centum per annum* on whatever exceeds the sum of £.50 Sterling, in the name of interest and damages; and it shall be competent to the said commissioners, or to any one of them, at any time when they shall think proper, to compare the sums so lodged from time to time by the trustee, with the sums received by him, and to examine the sums drawn by him from such bank, and disbursed by him in payment for or on account of the bankrupt estate; and the said commissioners are hereby required at the time when they audit the accounts of the trustee in manner herein directed, to cause an entry to be made in the sederunt book, certifying that they have made such comparison and examination, and whether they have found the money received by the trustee regularly and duly lodged by him in the manner herein directed, and whether the same has been duly drawn out and disbursed on account of the bankrupt estate; and in every case where it shall appear that the mo-

ney received by the trustee shall not have been regularly and duly lodged by him in the manner herein directed, the commissioners are hereby required to make a summary application to the Court to compel the trustee to pay at the rate of *£.20 per centum per annum*, upon every sum above *£.50 Sterling* at any time retained by him in his hands, beyond the space of ten days ; which money so recovered shall be lodged in the bank or banking company, with whom an account shall have been opened as aforesaid for the sequestrated estate.

XLIV. Provided always, and be it enacted, That the bank or banking company, with whom money belonging to a sequestrated estate shall be lodged, either by the interim factor or trustee, shall not be one in which such interim factor or trustee shall be an acting partner, manager, or cashier.

XLV. And be it enacted, That the trustee shall mark the productions made to him of the claims of the several creditors, and their vouchers, or grounds of debt, and certified accounts, with the oaths of verity upon the said claims, and make a minute or entry thereof, and of the date of production in the book of sederunt, but he shall return the vouchers or grounds of debt, if desired, to the claimant or his agent, and he shall be obliged to keep a regular book of accounts with the bankrupt's estate, and to make the same patent at all times to any of the creditors, or their agents, or to any of the said commissioners who desire to see the same ; and within ten days after the expiration of ten calendar months from the date of the first deliverance on the petition for sequestration, the commissioners, or a majority of them, shall audit the trustee's accounts, and, by a minute under their hands, in the book of sederunt, shall ascertain the sum to be allowed the trustee in name of commission, and likewise the net proceeds of the estate recovered, at the expiration of the said ten months ; which, after making a reasonable deduction for contingent expenses, shall be considered as belonging to the creditors who have produced their

claims and grounds of debt, and oaths of verity, prior to the date of the said minute; and the trustee shall be obliged, within the space of one calendar month after the expiration of the said ten months, to make up a state of the debts entitled as before to a share of the said first dividend, calculating interest on each up to the date of the first deliverance on the petition for sequestration, with a scheme or cast apportioning the fund of division among them, with the deduction already mentioned, according to their due order of ranking; and the trustee shall also, at the same time, make up a state of the funds belonging to the bankrupt still unrecovered, and of the money remaining in bank, after deduction of the sum so to be divided, which scheme and state shall lie open for the inspection of the creditors, or their agents, in the trustee's hands, for the space of one month longer, at the usual place where the trustee's business is carried on; and on the first lawful day after the expiration of one complete year from the date of the first deliverance on the petition for sequestration, the dividend shall be paid, and the trustee shall give one month's previous notice thereof, by advertisement in the newspaper aforesaid; and by putting into the post-office of the place where he resides, printed notices addressed to each creditor claiming on the estate, which advertisement and printed notice shall also bear, that the state and scheme lie in his hands for the inspection of the creditors; and in case any of the debts claimed upon shall be objected to in whole or in part, or their place in the ranking disputed, or any other objection shall be made to the scheme, as drawn out by the trustee, a share of the fund corresponding to the utmost amount of the sums or dividends to which the disputed articles may be entitled, and to any contingent expenses which the trustee, with consent of a majority of the commissioners named by the creditors as aforesaid, may think reasonable, shall be left in the bank or banking-house where the monies were deposited as aforesaid, till all such questions

are determined, either by arbitration or compromise, or by the Court of Session ; and the said Court is hereby authorised and required to determine the same summarily, upon the application of the trustee, or of any other party interested ; and when any such application is made, it shall be competent for any creditor to produce his interest, and to have his debt proved and constituted, if necessary, without raising a separate action for the purpose ; and if, in the event of such question, the said sum, or any part of it, shall remain unapplied to the debt or debts for which it was claimed, the same shall go into the fund for subsequent distribution ; and the shares of creditors not called for at the time of distribution shall again be forthwith deposited as before, on their risk, at such interest as can be got for the same.

XLVI. And be it enacted, That within ten days after the expiration of sixteen calendar months from the date of the first deliverance on the petition for sequestration, the commissioners, or the majority of them, shall in like manner audit the trustee's accounts with the bankrupt's estate, and by a minute under their hands in the book of sederunt shall ascertain the trustee's commission ; and the trustee shall, within one calendar month after the said sixteen months, make up another scheme of division of the sums recovered among the creditors who shall then have produced their interests and oaths of verity as before, with new states of the bankrupt's outstanding funds, and of the sum remaining in the bank, if any be, which shall in like manner remain open for inspection during one month longer ; at the expiration whereof, or on the first lawful day thereafter, the dividend shall be paid, after the like previous advertisement and printed notices, being exactly at the distance of eighteen calendar months from the date of the first deliverance aforesaid ; and if any of the debts are objected to, the procedure above mentioned shall be followed out, and the like procedure shall be followed out at similar intervals of time thereafter, to the ef-

fect that a dividend may be made at the end of every six months, until the whole funds of the bankrupt are collected and distributed among his creditors: Provided always, that after the second dividend is made, a majority of the creditors in value, at any general meeting called for the purpose in manner before specified, may determine that future dividends shall be made after a shorter interval, and the affairs of the trust brought to a more speedy close; and even before the period assigned for the first dividend as aforesaid, it shall be competent to four-fifths of the creditors in number and value present at the meeting after the last diet of the bankrupt's examination, or at any after meeting called for the purpose, to direct the trustee to apply for the authority of the Court of Session to make the first dividend at an earlier period than the end of the first year, but not earlier than six months from the date of the first deliverance aforesaid, if upon cause shewn it shall be found expedient so to do, and also to accelerate the time for making the second and other dividends; and in case there be any failure to make such dividends in the manner hereby directed, it shall be competent for any one creditor either to apply by petition to the Court of Session to have the trustee removed, or to require him to call a general meeting of the creditors to deliberate what course shall be taken; and no creditor shall draw any share of the different distributions, unless his grounds of debt, and oath on the verity thereof, shall have been lodged with the trustee previous to the respective times before mentioned when the dividends are ascertained by the commissioners, but he shall be entitled in the next distribution which happens after the grounds of debt are so produced and proved, to draw out of the first of the remaining fund of the bankrupt estate, a sum equal to the former dividend or dividends on his debt, with deduction of the interest obtained on the said dividends, which is to be retained by the trustee for the common behoof, on account of the creditor's delay, unless

there shall be sufficient funds for the payment of all the creditors, in which event the said creditor shall also ultimately receive full payment of his debt; and in making up the said schemes of division, all debts claimed on, which are entitled to a preference by the law of Scotland, not altered by this act, shall be preferred accordingly.

XLVII. And be it enacted, That in all questions upon this act, persons to whom the debtor is under obligation to pay money at a certain future time, shall be accounted creditors *de presenti* for the amount of the money, discounting the interest to the term of payment specified in the obligation, and may prove their debts in the same way as other creditors, and shall be entitled to their rateable dividends accordingly.

XLVIII. And be it enacted, That where a claim is entered by a creditor upon any obligation, the existence or amount of which depends upon a contingency which is still unascertained at the period of lodging the claim, the trustee shall rank the claimant as if the condition were purified; but the dividend or sum which the claimant would be entitled in that case to draw, shall again be deposited in the bank or banking-house appointed by the creditors as before, or lent out on heritable security by the trustee at the sight of the claimant, at such rate of interest as can be got for the same; and the interest thereupon arising shall belong to the creditors, and be included in the fund for their dividends, until the contingency upon which the obligation depends shall be declared, when the dividend so deposited shall belong to the claimant, or the other creditors, according to the terms of the obligation.

XLIX. And be it enacted, That the mode of settling interest upon claims shall be as follows; namely, the principal sum of each debt on which interest is chargeable, together with the bygone interest due upon it, if there be any, shall be accumulated as at the date of the said first deliver-

ance, for the purpose of the claimant being ranked and receiving his share of the first dividend corresponding to such accumulated sum, along with the principal sums of such debts as do not bear interest, or from which there may be a discount of interest, as not being exigible till an after period; and the second and other dividends shall in like manner be applied in extinction *pro tanto* of the sums then ranked, without counting interest upon them, from the date of the said first deliverance; but if there be any residue left of the sequestrated funds, after discharging the whole of such claims, the creditors shall also be entitled to claim out of such residue any arrear of interest which may still be due to them, as arising since the date of the said first deliverance, upon the respective sums ranked and stated as before mentioned.

L. And be it enacted, That in case any of the creditors shall hold any preferable security or lien for payment of his debt, obtained prior to the date of the first deliverance on the petition for sequestration, and not set aside by this act, upon any part of the bankrupt's estate or effects, the amount or value of such security or lien shall be deducted from his debt, and he shall be only ranked and draw a dividend for the balance after such deduction; and if any dispute shall arise about the value of such security, the creditor or claimant shall upon oath put a value upon it; and the trustee, with concurrence of a majority of the commissioners, shall then have an option either of taking an assignment to the security for the benefit of the creditors at large, on payment of the value so estimated, out of the first of the common fund, or of reserving the full effect of it to the creditor or claimant himself; and in either case, the creditor or claimant shall be ranked on the divisible fund for the balance of his debt so ascertained, amongst with the other creditors, such creditor or claimant being in no event entitled to draw more than his full payment.

LI. And be it enacted, That in case any creditor shall,

after the first deliverance on the petition for sequestration, obtain any legal or voluntary preference or payment on or out of any estate or subject belonging to the bankrupt, directly or indirectly situated without the jurisdiction of the Court, he shall be obliged to communicate and assign the same to the trustee for behoof of the creditors, before he can draw any dividend out of the fund in the hands of the trustee; and he shall in all events be liable to an action before the Court of Session, at the instance of the trustee, to communicate the said security or payment in so far as the jurisdiction of the Court can reach him; he being always entitled to indemnification of his necessary expenses, and to an allowance of five *per centum* on the sum recovered to the sequestrated estate.

LII. And be it enacted, That the making production of the ground of debt or certified account, with the oath of verity aforesaid, in the hands of the interim factor, sheriff-clerk, or trustee, or in the Court of Session, shall have the same effect as to interrupting prescription of every kind, from the period of such production, as if a proper action had been raised on the said grounds of debt against the bankrupt, and against the trustee.

LIII. And be it enacted, That in every such oath the creditor deponing shall specify every security he holds for his debt, whether on the estate of the debtor or other obligants, and shall swear that he holds no other security than is mentioned in his oath, otherwise his oath shall not be received by the trustee as sufficient, nor his claim be sustained; and the oaths of verity upon debts required by this act may be taken before any judge-ordinary or justice of the peace; and where any creditor is out of the kingdom of Great Britain and Ireland, or is under age, or incapable to give an oath, in all such cases an oath of credulity by the agent, factor, guardian, or other manager, taken in the same manner, shall be sufficient; but which oaths, either by the party himself,



or any other person acting for him, shall not supersede the necessity of bringing legal evidence of the debt, if the same is objected to as unliquidated, or where evidence appears to be necessary in the circumstances of the case; and further declaring, that no fee shall be paid by any creditor to the clerk of court, or any person whatsoever, for an oath of verity or credulity as to the debt claimed being due, or for production of the interest or ground of debt of any creditor, unless the debt claimed on exceeds the sum of ten pounds lawful money of Great Britain.

LIV. And be it enacted, That in case any creditor shall be guilty of false swearing in any oath to be emitted in pursuance of this act, he shall be liable to a prosecution at the instance of a trustee, or any of the creditors, and of his Majesty's Advocate, for perjury, and shall also forfeit to the trustee, for behoof of the creditors, the whole dividends on his debt.

LV. And be it enacted, That the trustee may, on behalf of the creditors at large, with consent of a majority of the commissioners named as aforesaid, compound and transact, either by submission or by private compromise, all doubtful claims which the bankrupt may have against others, or all debts due to the estate out of other bankrupt subjects, and likewise all doubtful claims or demands made against the estate or questions of ranking and preference, and all contingent debts and annuities due to or by the estate, the value of which it may be expedient to settle in that manner, in order that a final distribution may sooner take place.

LVI. And be it enacted, That if, at the expiration of one year and an half from the date of the sequestration, any of the personal effects of the bankrupt, or any debts, whether heritable or moveable, due to him, remain still unrecovered, it shall be in the power of four-fifths of the creditors in number and value, convened at any general meeting called for the purpose, after one advertisement two weeks previous to

the meeting, in the Edinburgh and London Gazettes, to direct that such remaining debts and effects, and also any contingent or future interest which the creditors at large may have in dividends deposited in bank, or lent out as aforesaid, be sold off by public auction upon two months' previous notice published in the Edinburgh and London Gazettes, the sale either to be in whole or in lots, as a majority in value of the creditors shall direct.

LVII. And be it enacted, That the surplus of the bankrupt's estate and effects that may remain after payment of his debts, computing interest thereon as aforesaid, and the charges of recovering the estate, and distributing the same, shall be paid or made over to him, or to his assignees or successors.

LVIII. And be it enacted, That at or after the first general meeting of the creditors, and at any time before the period assigned for the second dividend, it shall be competent for the bankrupt, with concurrence of the interim manager or trustee, and of four-fifths of the creditors in number and value, who have produced their grounds of debt, or certified copies of their accounts and oaths of verity as before mentioned, to apply to the Court of Session for a personal protection from diligence for such time as the Court shall think reasonable; and the same being once obtained, may be renewed within the same period, if applied for in name of the bankrupt, with consent of the trustee alone, unless any of the creditors oppose it, in which case the consent of four-fifths in number and value shall be required as before: Providing always, that from and after the period assigned for the second dividend, the power of granting personal protections under this statute shall cease, unless upon cause shewn to the Court, and oath made, both by the bankrupt and by the trustee, that the delays which have happened in making a final distribution were unavoidable, and that every proper step has been taken, and will continue on their part to be

taken, for winding up the affairs of the bankrupt, and bringing the trust to a final close; and also providing, that after the period of the third dividend, or two years subsequent to the first deliverance aforesaid, the power of granting personal protections under this act shall entirely cease, without prejudice to a final discharge, either upon full payment, or as herein-after directed.

LIX. And be it enacted, That in case at the meeting held immediately after the second examination of the bankrupt, or at any subsequent meeting called by the trustee with consent of a majority of the commissioners, the bankrupt or his friends shall make a proposal of composition to the creditors, and shall offer caution to the satisfaction of nine-tenths of them, both in number and value, assembled at the said meeting, for such composition upon his whole debts, as the said nine-tenths in number and value so assembled shall think just and reasonable, the trustee shall appoint another meeting for the purpose of deciding upon such offer or proposal with or without amendment, at the distance of not less than three weeks thereafter, and of which meeting he shall give notice by advertising the same twice in the said newspaper, and by putting into the Post Office of the place where he resides, printed notices addressed to each of the creditors claiming on the sequestrated estate, a fortnight at least before the proposed meeting, specifying the time and place, and purpose of the meeting; but in the meantime he shall proceed in executing his duty as trustee, in the same way as if no proposition had been made; and if at the meeting so appointed, it shall be the opinion of nine-tenths of the creditors there assembled both in number and value, that the offer should be accepted of, a report of the proceedings relative thereto shall be forthwith made up by the trustee, and transmitted to the clerk of the sequestration in the Court of Session, for the approbation of the Court; and if the Court, upon considering said report, and hearing any

objections that may be stated by opposing creditors, shall find the proposition reasonable, and that the same has been assented to, not only by nine-tenths in number and value of the creditors who attended by themselves, or others authorised by them, at the meeting last mentioned, but by nine-tenths of all the creditors who have produced grounds of debt or interests, and oaths of verity, an act or order shall be pronounced to that effect, and the bond of caution, which must be previously lodged in the clerk's hands, shall then be given up to the trustee for behoof of the creditors, the whole expense attending the sequestration being at the same time paid or provided for, to the satisfaction of the Court, by the bankrupt or his friends, after which all proceedings in the sequestration shall cease, and the said act or order shall declare the trustee exonerated, and the bankrupt discharged, except as to the payment of the composition.

LX. And whereas it has too frequently happened that sequestrations have been obstructed, and much expense, litigation, and delay, have been occasioned by collusive and ineffectual plans of composition concerted between the bankrupts and particular creditors; be it enacted, That every proposal or agreement for a composition with individual creditors, or to stop the proceedings in the sequestration, other than is hereby expressly authorised and allowed, shall be deemed illegal and void, and all persons concerned in them shall be liable to be complained of to the Court of Session, at the instance of any party having interest, and made answerable for all consequences; and if it shall be proved that any creditor has privately accepted of a gratuity, or higher composition, for giving his concurrence to the measures proposed on behalf of the bankrupt or his friends, he shall forfeit his debt, and be liable in restitution of what he has received, which shall go into the general fund of division; and the bankrupt himself shall, if required, make oath, that there has been no such private transaction or compromise between

him and any of the creditors, and that he has used no undue influence with any of them to obtain their concurrence.

LXI. And be it enacted, That in case no proposal of composition is made in the manner before specified, or in case the same, when made, shall become ineffectual, no other proposal of a similar nature shall be attended to by the trustee, or be of any effect, unless proof is made that the same has been assented to by every creditor without exception; but after the period assigned for the second dividend, it shall be lawful for the bankrupt, with concurrence of the trustee and four-fifths of the creditors in number and value, to apply to the Court of Session by petition, praying that he may be held as finally discharged of all his debts contracted before the application for sequestration; and this petition, being intimated upon the wall, and in the Edinburgh Gazette, and London Gazette, the Court shall, at the distance of not less than three calendar months thereafter, resume the consideration thereof; and if no objection is made, the Court may then pronounce an act or order in terms of the prayer of the petition; but if appearance is made by any of the creditors, objecting that the discharge ought not to be granted, on account of the bankrupt's not having made a fair discovery and surrender of his estate, or that he has refused to grant a disposition to the trustee, as ordered by the Court, or has wilfully been absent from the diets of examination, or has been guilty of any collusion, or that his bankruptcy did not arise from innocent misfortunes, or losses in business, but from culpable or undue conduct, the Court shall judge of these objections, and allow a proof of them, if thought necessary, and shall either grant or refuse the discharge, or annex such conditions thereto as the nature and justice of the case may require, the bankrupt always taking an oath before the Court, or upon commission before the Sheriff, before the act can be extracted, that he has faithfully complied with all the requisites of the statute, and has used no un-

due influence, nor had recourse to any secret compromise with his creditors, or any of them, to obtain their concurrence; and if it shall appear that there has been any such private transaction between the bankrupt and any of his creditors, the same is hereby declared to be unlawful, and no action shall lie upon any bill or other security granted in consequence thereof, the person taking such oath being also liable in the pains of perjury, if convicted of having sworn falsely.

LXII. And be it enacted, That all discharges granted to any bankrupt under any preceding act of Parliament, shall not be affected by any thing contained in this present act.

LXIII. And whereas it may be reasonable that the bankrupt should have some allowance out of the estate for supporting himself and his family, while the trustee may have occasion for his assistance; be it enacted by the authority aforesaid, That four-fifths of the creditors in number and value, present at the meeting after the last diet of the bankrupt's examination, or at any after meeting called for the purpose, may authorise the trustee, with consent of the commissioners, or any two of them, to allow and pay to such bankrupt, conforming to the terms of this act, from time to time as they shall think fit, such sum or sums of money, out of the proceeds of his estate, as they shall think proper, towards the subsistence and support of himself and family till the period assigned for the second dividend, not exceeding three guineas *per* week from the date of the sequestration to the period aforesaid, and so as not to amount upon the whole to more than five pounds *per centum* of the net produce of the estate: Provided always, that no such allowance shall be given, if the bankrupt has not kept, or shall not produce, such book or books as may enable the creditors and trustee to acquire a distinct knowledge of his affairs.

LXIV. And be it enacted, That in all cases under this act, where the creditors are required to be counted in num-

ber, any creditor whose debt is below twenty pounds Sterling shall not be reckoned in number, but the debt due to such creditor shall be computed in value; and in the cases before mentioned of compounding with or discharging the bankrupt, any debt due to a creditor who has a preferable security or lien upon the bankrupt's estate or effects shall not be counted in the value, but shall be laid aside to the extent of what may be ascertained as the value of such security or lien, in the manner before directed, without prejudice to his being counted in number, if his whole debt be not extinguished by such preferable security or lien, or to his being counted also in value to the extent of the balance; and the same rule shall be followed in the case of partnership debts claiming upon the estates of individual partners.

LXV. And be it enacted, That the sederunt book before mentioned shall contain a full record of all minutes of meetings (which shall be subscribed by the preses of such meetings in the sederunt book), states of accounts, and schemes of division, and another duplicate of these minutes, states, and schemes, shall be subscribed by the trustee, and within fourteen days after the lapse of one year from the date of the first deliverance on the petition for sequestration, shall be transmitted to the clerk to the sequestration in the Court of Session, to lie among the records of the Court; and within fourteen days after the end of every succeeding half year till the estate is finally divided, a similar duplicate of the proceedings in the said book for the half year preceding shall be signed by the trustee, and transmitted to the clerk to the sequestration, to lie among the records of the Court; and extracts of these writings, signed by one of the principal clerks of Session, shall bear evidence in all courts of justice; and the said book of sederunt, and the bankrupt's books and papers, and the whole other papers in the trustee's hands, shall at all times be made patent to any creditor who desires to see the same.

LXVI. And it be enacted, That all applications under this act, which are directed to be made to the Court of Session, shall be made to either Division thereof when the Court is sitting, or to the Lord Ordinary on the Bills in time of vacation, or during any recess of the Court, or when the Court is not sitting; and the Lord Ordinary on the Bills shall have the full powers of the Court in ordering and following out the different steps of proceeding required by the act while the Court is not sitting, excepting only that no discharge shall be granted by the Lord Ordinary without the authority of the Division of the Court to which he belongs.

LXVII. And be it enacted, That if any appeal shall be taken against any order or interlocutor of the Court of Session, or against any order of the Lord Ordinary upon the bills, in the execution of this act, it shall be lawful and competent to the said Court in time of session, and the Lord Ordinary on the Bills in time of vacation, or during any recess, notwithstanding such appeal, to make such orders, and direct such proceedings, as shall appear to be necessary for preventing the estate of the debtor from being embezzled, secreted, damaged, or dilapidated, while the appeal is pendent; and every step may in the mean time be taken in the recovery of the bankrupt's estate, and the distribution thereof, that is not repugnant or injurious to the interest which the party appealing by the appeal insists upon.

LXVIII. And be it enacted, That when any petition for sequestration, under the authority of this act, is presented, it shall be competent for any other creditor to concur therein, and to follow forth the same, even without the consent, or after the death of the creditor or creditors originally petitioning, and the expense disbursed therein shall be repaid by the trustee out of the first money that comes into his hands; and if the bankrupt shall happen to die after the petition for sequestration shall be presented, the proceedings



under this act shall, notwithstanding, be carried on and followed out to their conclusion, as if he were in life.

LXIX. And be it enacted, That it shall and may be lawful for the Court of Session to establish such regulations respecting the forms of proceeding as shall appear to be most proper for carrying this act into effectual execution, according to the true intent thereof, and to publish the same in any act or acts of sederunt, which shall be binding in so far as is consistent with this act.

LXX. And be it enacted, That in all cases under this act, where any thing is directed to be done by the Sheriff depute or substitute, or where any mention is made of the sheriff-clerk, or the word county is used, it is hereby meant and intended that these terms shall equally apply to the Stewart depute or substitute, or Stewart-clerk of any Stewartry in Scotland.

LXXI. And be it enacted, That the interim factor, sheriff-clerk, and the trustee and commissioners, or any of them, shall at all times be amenable to the Court of Session, by summary application to that Court, to account for their intrusions and management, and to answer for their conduct, at the instance of any party interested; and in case it shall appear to the Court that such application ought not to have been made, the party complained of shall be entitled to his full costs, to be either retained out of the funds, or recovered from the party complaining, as the Court shall direct; but otherwise the Court shall give such directions in regard to costs as they shall think fit; and it shall be competent at any time for one-fourth of the creditors in value to apply summarily to the Court of Session for having the said interim factor or trustee removed, upon cause shewn; a majority of creditors in value, at any meeting to be advertised for the purpose, shall likewise be entitled to remove or to accept of the resignation of any trustee; and in either of these cases, or in the event of the acting trustee's death, the next trustee in succession shall be entitled to act; and, upon

failure of the several trustees originally named, by death or otherwise, it shall be competent to any two of the creditors to apply to the Court of Session to cause a meeting of the creditors to be held, upon due advertisement, for choosing a new trustee, or trustees in succession ; and in any of these cases, the new acting trustee shall immediately call to account his predecessors in office, or their heirs and representatives, and shall be vested with the same powers, and subject to the same rules and regulations, as any former acting trustee.

LXXII. And be enacted, That when a final division is made among the creditors in any sequestration awarded under the authority of this act, or of the foresaid recited acts, or when a trustee or factor named under the authority of this or the said former acts intends to resign his office, it shall be competent for him to apply by petition to the Court of Session, craving to be discharged of the trust ; and the Court shall appoint the petition to be advertised in the Edinburgh Gazette ; and, at the end of fourteen days from the date of the advertisement, if no valid objection is stated, and if the Court is satisfied that the trustee has complied with the regulations of the statute, so far as they regard him, the prayer of his petition may then be granted ; but if any objection is stated, the Court shall proceed to determine the same in a summary manner : Provided always, that before making any such application, the trustee shall make out a full state of his accounts, and of the situation of the sequestrated estate, and shall call a meeting of the creditors, of which at least four weeks' notice shall be given, by advertisement inserted in the Edinburgh Gazette, and also by letters through the medium of the Post Office, addressed to every creditor who shall have produced their claims and proved their debts, intimating the purpose of the meeting, and also that the aforesaid state will in the meantime lie in his hands for their inspection.

LXXIII. And be it enacted, That this act shall be construed by all judges in the most beneficial manner for promoting the ends hereby intended; and that the same shall be construed to comprehend unmarried women and widows coming within any of the descriptions before mentioned, and also married women carrying on trade or merchandise independent of their husbands.

LXXIV. And be it enacted, That no rates or duties imposed by any statutes upon estates or effects sold by auction, shall be exigible upon any estate or effects sold under the authority of this act.

LXXV. And be it enacted, That upon the expiration of three years after the date of the first deliverance, if the affairs of the bankrupt estate shall not have been previously winded up, the trustee shall draw up a report shewing the situation of the estate, and stating the unclaimed dividends, a printed copy of which report shall be sent to every creditor who shall have proved a debt upon the estate; and within two months after the expiration of the said three years from the date of the first deliverance, a general meeting of the creditors shall be called by the trustee after notice given by advertisement in the Edinburgh Gazette and in the London Gazette, fourteen days before such meeting, when the creditors shall give such directions as shall appear to them proper for the disposal by public sale of any outstanding debts or effects, and otherwise, as they shall think proper in regard to the situation of the bankrupt estate.

LXXVI. And be it enacted, That after such meeting shall have been held, or after the expiration of the period when the same ought to have been held, it shall be competent for the Court, upon the application of any of the creditors, or of the trustee, and after due notice given by such form of publication as may be thought requisite, to fix a reasonable time within which the whole proceedings shall be finally closed; and the time so fixed being elapsed, if there

be no further application from the trustee, or any of the creditors, the sequestration shall be considered as virtually at an end ; but in case such application shall in the mean time have been made by any one concerned, the Court will judge according to circumstances what further directions ought to be given, so as within a short limited time to attain the object in view.

**LXXVII.** And whereas several estates of bankrupts which were sequestered under the authority of former acts, have not been finally divided ; be it enacted, That such sequestrations shall still subsist to the effect of being proceeded in and brought to a conclusion in the manner directed by this act : Provided always, that every thing done in any such sequestration prior to the passing of this act, in pursuance of any such former acts, shall remain valid and effectual, any thing herein contained to the contrary notwithstanding.

**LXXVIII.** And be it enacted, That this act shall commence from and after the passing thereof, and shall continue and be in force for seven years from thence, and to the end of the then next session of Parliament.

This act has been continued successively by 3. of Geo. IV. *cap.* 29 ;—4. of Geo. IV. *cap.* 8 ;—6. of Geo. IV. *cap.* 11 ;—and 7. & 8. of Geo. IV. *cap.* 11, by which it is continued till 5. July 1828.

#### ACTS OF SEDERUNT.

Act of Sederunt, 31. March 1685, declares, that those creditors who are preferred to the price of the lands, shall, upon receiving payment, dispoise and assign the rights and diligences used at their instance to the purchaser, with warrandice *quoad* the sum paid to them.

Article 26. of the Parliamentary regulations 1685 requires,

that the ranking of the creditors shall be finished by an extracted decree before the sale can proceed, at least to the extent of the price affixed on the lands by the Lords. But this was altered by the act 54. of Geo. III. *cap.* 137; and the sale is now allowed to take place, whether the ranking be concluded or not.

By Act of Sederunt, 23. January 1779, wages due to the farm-servants of a bankrupt tenant are privileged debts on the price of the bankrupt's effects, and preferable to arresters.

Rules are given for the conduct of factors on sequestrated estates, by act of Sederunt, 22. November 1711, § 6. 7. 8 and 10.

By Act of Sederunt, 23. November 1710, members of court cannot be factors.

By Act of Sederunt, 25. December 1708, factors are prohibited from purchasing debts due to the estate under sequestration.

By Acts of Sederunt, 9. July 1791, and 10. July 1792, common agents are ordained to lodge states in processes of ranking and sale.

Acts of Sederunt, 11. July 1794, and 14. December 1805, concerning judicial sales and rankings at the instance of creditors, with reference to the statute 33. of Geo. III. *cap.* 74.

FRAUDULENT BANKRUPT.—See *Justiciary Court*.

Erskine, IV. I. 28.—Bell, I. 14. and II. *passim*.

#### DECISIONS.—ACT 1621.

Morrison, *voce* "*Bankrupt*," Part II. Chap. I. from p. 879 to p. 1082.—*Supplement and Appendix*.—Blackburn *v.* Oliver, 29. May 1816.—Ballantyne *v.* Dunlop, 17. Feb. 1814.—Garden *v.* Stirling, &c. 26. Nov. 1822.—Jeffrey *v.* Campbell's Children, 24. May 1825.

## ACT 1696.

Morrison, *ibid.* Chap. III. from p. 1119 to 1193.—Wrights *v.* Findlater, 19. Jan. 1809.—Bank of Scotland *v.* Stewart, 7. Feb. 1811.—Miller *v.* Low, 11. Dec. 1822, reversed 12. June 1827.—Spier *v.* Dunlop, 15. June 1825.—Same parties, 30. May 1827.—Spier *v.* Dunlop, 22. May 1826, Wilson & Shaw, 253.—Geddes *v.* Trustee for Smith's Creditors, 1. Dec. 1810.—Maxwell *v.* Drummond's Trustees, 2. July 1825.—Fulton *v.* Lead, 8. July 1825.—Anderson *v.* Starkey, Fletcher & Co. 2. March 1813.—Black *v.* Cuthbertsons, 15. Dec. 1814.—Blaikie *v.* Cleg, 21. Jan. 1809.

Other cases in Morrison's Dictionary, *ibid.* Part III. to illustrate the following branches of the later statutes, viz.

Chap. 1. Description of the debtor and procedure in the sequestration.—2. Competition between sequestration and other diligence.—3. Proof of debts, and qualification to vote.—4. Interim factor.—5. Trustee, his election, duties, and discharge or removal.—6. Commissioners.—7. Examination of the bankrupt.—8. Meetings of creditors and procedure.—9. Composition contract.—10. Personal protection and discharge of the bankrupt.—11. Sale of outstanding debts.—12.—Ranking of creditors.

Pollock, &c. *v.* Paterson, 10. Dec. 1811.—Stewart *v.* Greig, 15. Feb. 1812.—Royal Bank of Scotland *v.* Stein's Assignees, 20. Jan. 1813.—Dick *v.* Trustees of Lyell & others, 28. Jan. 1815.—Cramond *v.* Hogg, 21. Feb. 1815.—Ritchie, &c. *v.* Steven, &c. 25. May 1816.—Fulton, &c. *v.* Forbes, 9. July 1816.—Grieve, 4. Feb. 1817.—Earl of Kellie *v.* Craufurd, 28. Feb. 1821.—Balfour *v.* Baynes, 1. Mar. 1821.—Taylor *v.* Little, 26. July 1822, Shaw's Appeals, I. 254.—Black *v.* Kennedy, 29. June 1825.—Manuel & Co. *v.* Bain,

21. Jan. 1826.—Thomson *v.* Broom, 24. Feb. 1827.—Trustees for Falside's Heirs *v.* Walker, 4. March 1815.—M'Ewan *v.* Young, 27. May 1817.—M'Lachlan *v.* Bennett, 15. June 1826.—Bow *v.* Spankie, 1. June 1811.—Hunters & Co. 14. Jan. 1812.—Williamson *v.* Lowe, 4. Dec. 1818.—Jeffrey *v.* Creighton, 20. Jan. 1821.—Philips *v.* Murray, 22. June 1821.—Gibson *v.* Lockhart, 1. July 1825.—Ferrier *v.* Berry, 28. April 1826, Wilson & Shaw's Appeals, 93.—Broughton *v.* Dickson, &c. 2. July 1812.—Campbell, &c. *v.* Buchanan, 23. Feb. 1816.—Charles *v.* Roxburgh, 7. June 1825.—Kennedy, &c. *v.* Watson, 29. June 1825.—Furlong *v.* M'Nair, 1. Feb. 1809.—Pattison *v.* Cuninghame, 26. Jan. 1811.—Wilson *v.* Thomson, 14. Dec. 1811.—Paterson, 15. Jan. 1812.—Willison *v.* Ker, 11. March 1815.—Threshie, 30. May 1815.—M'Dougall, 13. June 1818.—Brown & Thin, 4. Feb. 1819.—Crawfurd *v.* Grace, 8. Dec. 1821.—Stewart, 13. Feb. 1822, Kennedy *v.* Allan, 1. Feb. 1823.—Campbell *v.* Watson, 29. June 1825.—Blyth *v.* Baird, 8. July 1825.—Spence *v.* Eadie, 2. Dec. 1826.—Sheriff, 25. May 1811.—Connell *v.* Ferrier, 16. Jan. 1813.—Spence, &c. *v.* Garden, 16. Dec. 1817.—Brock *v.* Boyle's Trustees, 8. March, 1825.—Duncan *v.* Corbet, 13. Dec. 1826.—Tatnal *v.* Reid, &c. 2. Feb. 1827.—Bannatyne, 10. Feb. 1810.—Howard's Trustees, 25. Feb. 1820.—Parlane, &c. *v.* Watson, 28. June 1825.—Bruce *v.* Davenport & Co. 7. July 1825.—Chapman, &c. *v.* Dods, &c. 2. Dec. 1825.—Johnstone, 18. Feb. 1826.—White, 28. Jan. 1824.—Ewing, &c. *v.* Lawrie, 28. Feb. 1826, Wilson & Shaw, 19.—Brown *v.* Dawson, &c. 25. Nov. 1809.—Tansh, &c. *v.* Little, &c. 15. Feb. 1817.—M'Kellar *v.* Balmano, 8. March 1817.—Ker *v.* Taylor, 24. Jan. 1823, and 9. March 1824.—Parlane, &c. *v.* Templeton, &c. 28. June 1825.—Haston, &c. *v.* Chapman, &c. 1. March 1826.—Hunter, 11. March 1812.—M'Nicoll, 7. March 1816.—Spence, &c. *v.* Paterson's Trustee, 7. July

1812.—Gray, &c. v. Newlands, &c. 29. June 1821.—Johnston v. Smellie, 23. Feb. 1811.—Handyside, 26. June 1811.—M'Funn & Sons, 11. July 1811.—Grant, 21. Dec. 1811.—Smith, 14. Nov. 1812.—Hollingworth v. Dunbar, 21. Jan. 1813.—Stewart v. Patrick, 23. Feb. 1813.—Gillespie & Co., 15. May 1813.—Whitelaw, &c. v. Stein, 20. May 1814.—Mack v. Jenken, 25. Nov. 1814.—Jameson & Sons v. Baxter, 15. Feb. 1815.—Hyde & M'Gregor, 1. March 1815.—Ewing, 11. March 1815.—Mellis v. Royal Bank of Scotland, 22. June 1815.—Muckle, 19. Jan. 1816.—Fullarton, 11. March 1817.—Brown v. Gray, 10. July 1817.—M'Gavin & Co., 14. Nov. 1817.—Sibbald v. Crosbie, 13. Dec. 1817.—Bryce, &c. v. Monteith & Co., 20. Feb. 1818.—Deuchart, &c. v. Watt, 15. May 1819.—Paul v. Black, 19. Dec. 1820.—Juner v. Cadell, 15. Feb. 1822.—Cuthbertson v. Lyon, 23. May 1823.—Glass v. M'Intosh, 12. May 1825.—Reid v. Wilson, 27. May 1825.—Browning, 7. July 1826.—Kilpatrick, &c. v. Miller, 9. June 1825.—Arrol v. Montgomery, 24. Feb. 1826.—Ferrier, &c. v. Berry, 25. April 1826, Wilson & Shaw, 93.—Sheriff v. Steel, &c. 23. Nov. 1809.—Dods v. Jackson, 28. May 1811.—Campbell, 17. Dec. 1812.—Fraser, 27. May 1815.—Dunlop v. Geils, 25. June 1813.—Duncan v. Rordanz, 25. June 1817.—Garden v. Spence, 8. July 1817.—King, 11. July 1817.—Cameron v. M'Nab, &c. 28. Feb. 1818.—Kerr v. Allan & Co., 18. June 1825.—Smellie, &c. v. Wilkie, 8. July 1825.—Berry, &c. v. White, &c. 1. Feb. 1825.—Ewing v. Gilchrist, 28. Feb. 1826, Wilson & Shaw, 22.—Smith v. Robertson, &c. 10. Feb. 1826.—Morrison v. Dundas, 11. July 1809.—Brock v. Brown's Trustees, 8. March 1825.—M'Lane v. Robertson, 29. Nov. 1825.—Crawfurd v. Currie, 8. March 1817.—Howden v. Hewat, 14. Jan. 1818.—Cuthil v. Jeffery, 21. Nov. 1818.—De Tastel v. M'Queen, 1. Dec. 1825.—Ferrier v. Hector, 24. May 1822.—Bank of Scotland v. Robertson, 3. July 1823.—Newbigging v. Dalgleish, 12. Nov. 1823.—Mein v.



Saunders, 6. March 1824.—Duke of Argyle *v.* Johnston, 24. May 1825.—Balmanno *v.* M'Nee, 24. Feb. 1826, Wilson & Shaw, 7.—French or Hay, &c. *v.* Marshall, 22. March 1826, *ibid.* 71.—Horsefalls, &c. *v.* Virtue, &c. 24. Nov. 1826.—Renfrewshire Bank *v.* Saunders, 19. March 1827.—Nicol *v.* Christie, 30. June 1827.—Aitken, 6. June 1809.—Stein *v.* Hutcheson, 11. Nov. 1810.—Clerk, &c. *v.* Ewing & Brown, 20. May 1813.—Mitchell, &c. *v.* Phin, 12. Jan. 1813.—Phin *v.* Cooper's Trustee, 4. March 1814.—Anderson *v.* Stewart, 16. Dec. 1814.—Garden, &c. *v.* M'Kellar, 9. July 1816.—Sanderson *v.* Cairnie & Co., 11. March 1820.—Grant *v.* Girdwood & Co., 23. June 1820.—Strong *v.* M'Laren, &c. 12. May 1821.—M'Kenzie *v.* M'Kersie, 1. March 1823.—Young, Ross & Co. *v.* Muir, 2. March 1824.—Paul *v.* Mathie, 2. Feb. 1826.—Crawfurd's Trustees *v.* Haig, &c. 25. May 1827.—Dunlop *v.* Oughterson, &c. 9. June 1827.

## CESSIO BONORUM.

Sharp, 4. Feb. 1775.—M'Cubbin, 12. July 1785.—Fraser, 10. March 1786.—Smith, 9. March 1798.—M'Kenzie, 3. Feb. 1779.—Dunlop, 11. July 1799.—Wilson, 8. July 1788, Fac. Coll. vol. VIII. Nos. 220. & 269, IV. 75. XI. 235, and X. 88. & 99.—Pickard, 11. Jan. 1813.—M'Neil, 9. March 1815.—Sheriff, 3. March 1814.—Ross, 5. July 1816.—M'Donald, 3. July 1817.—M'Gregor *v.* M'Nab, 3. March 1809.—Lamb, &c. 16. May 1798.—Reid, 11. July 1778.—Pringle, 5. Aug. 1788.—M'Kay, 25. Jan. 1794.—Douglas, 15. Jan. 1794.—Grierson *v.* Campbell, 5. March 1768.—Small, 18. Feb. 1764.—Macdowall, 5. March 1791.—Law, 12. Dec. 1795.—Dick, 17. Nov. 1775.—Isbister, 17. Dec. 1808.—Murray *v.* Smye, 10. July 1811.—M'Cubbin *v.* Thomson, &c. 12. July 1785, Minister of Queensferry, 29. June 1805.—Rutherford, 5. June 1813.— See Dictionary, voce "*Prisoner*," § 2.

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 BATTERY *pendente lite*.

Formerly, by the act 1584, *cap.* 138, being a ratification, with some additions, of a previous act, 20. June 1555, those guilty of assault *pendente lite* lost their cause, and incurred other penalties. It was only a temporary act, but made perpetual by the act 1594, *cap.* 219. Both these acts, however, have been repealed by the statute 7. of Geo. IV. *cap.* 19.

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## BIGAMY.

Bigamy is the contracting of a second marriage during the subsistence of a former. There is one statute on this subject, the act 1551, *cap.* 19, whereby

It is statute and ordained, that quhat-sum-ever person maries twa sindrie wives, or women maries twa sindrie husbands, livand togidder un-divorced lauchfullie, contrair the aith and promise maid at the solemnization and contracting of the matrimonie, and swa ar of the law perjured and infamous: Therefore, that the paines of perjuring be execute upon them with all rigour; that is to say, confiscation of all their gudes moveable, warding of their persones for zeir and day, and langer in-during the Queenis will, and as infamous persons never able to bruik office, honour, dignitie, nor benefice in time to cum.

But, as bigamy involves the higher crime of adultery, the latter is generally made the charge against those accused of bigamy.—Hume, I. 455.

The following, however, are instances of conviction under the act above quoted :

John Macdonald, 20. Sept. 1824, at Inverness :

Arthur O'Neil, Autumn circuit 1816 at Ayr :

Andrew Craig, 17. July 1817, High Court of Justiciary.

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### BILLS OF EXCHANGE AND PROMISSORY-NOTES.

It is a remarkable fact in the history of these documents, that, although the mode of recovering their contents, and the rights of the creditor generally, had been pointed out in previous statutes, their precise form or endurance were not defined till 1772.

With regard to the constitution of a bill of exchange, the statute 1696, *cap.* 25, which the Court have held to apply to bills in which the name of the creditor is left blank, declares, “ That for hereafter no  
“ bonds, assignations, dispositions or other deeds be  
“ subscribed blank in the person or person’s name  
“ in whose favour they are conceived : And that the  
“ foresaid person or persons be either insert before or  
“ at the subscribing, or at least in presence of the  
“ same witnesses who are witnesses to the subscribing  
“ before the delivery ; certifying, that all writs otherwise subscribed, and delivered blank as said is, shall  
“ be declared null.” But it is expressly declared,  
“ that this act shall not extend to the *indorsation* of  
“ bills of exchange, or the notes of any trading company.”

The statute 1. and 2. of Geo. IV. *cap.* 78, “ to regulate the acceptance of bills of exchange,” declares,

That, from and after the 1st day of August now next ensuing, if any person shall accept a bill of exchange, payable at the house of a banker or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall in his acceptance express that he accepts the bill payable at a banker’s house or other place only, and not otherwise, or elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker’s house or other place.

II. And be it further enacted, That from and after the said 1st day of August, no acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts.

On the subject of the creditor’s right, there are two statutes.

The act 1681, *cap.* 20. declares,

That in case of any forraign bill of exchange, from or to this realm duely protested for not acceptance, or for not payment, the said protest having the bill of exchange prefixed, shall be registrable within six moneths after the date of the said bill, in case of non-acceptance, or after the falling due thereof in case of non-payment, in the books of Council and Session, or other competent judicatures, at the instance of the person to whom the same is made payable, or his order, either against the drawer, or indorser, in case of an protest for non-acceptance, or against the acceptor, in case of a pro-

test for non-payment, to the effect it may have the authority of the judges thereof interponed thereto, that letters of morning upon a simple charge of six dayes, and others ex-cutorials necessary may pass thereupon, for the whole sums contained in the bill, as well exchange as principal, in forme as effeirs, sicklike, and in the same manner, as upon registrat bonds, or decreets of registration, proceeding upon consent of parties: Providing alwayes, that if the saids protests be not duly registrate within six moneths, in manner above provided, then and in that case, the saids bills and protests are not to have summar execution, but only to be pursued by way of ordinary action, as accords: And farther, it is hereby statute and enacted, That the sums contained in all bills of exchange bear annual-rent, in case of not acceptance, from the date thereof, and in case of acceptance, and not payment, from the day of their falling due, ay and while the payment thereof: And farther, his Majesty, with advice foresaid, hereby declares, That notwithstanding of the foresaid summar execution provided to follow upon bills of exchange, for the sums therein contained, in manner above specified; yet it shall be leasom to the party charger to pursue for the exchange, if not contained in the saids bills, with re-ex-change, damage, interest, and all expences, before the ordinary judge, or in case of suspension, to eek the same to the charge, at the discussing of the said suspension, to the effect that the same may be liquidat, and decret given therefore, either against the party principal, or against him and his cautioners, as accords.

The act 1696, *cap.* 36, declares, “ That the same  
 “ execution shall be competent, and proceed upon in-  
 “ land bills or precepts, as is provided to pass upon fo-  
 “ reign bills of exchange, by the 20th act of the third  
 “ Parliament of King Charles II. holden *in anno* 1681;

“ which act is hereby extended to inland bills and pre-  
“ cepts in all points.”

The same provisions, applicable to bills of exchange, are extended to promissory-notes by several statutes.

The act 7. of Queen Anne, *cap.* 24, renders perpetual a previous act made in the third and fourth years of her Majesty's reign, entitled, “ An act for giving like  
“ remedy upon promissory-notes as is used upon bills  
“ of exchange, and for the better payment of inland  
“ bills of exchange.”

The statute 12. of Geo. III. *cap.* 72, § 36, is as follows :

“ XXXVI. And whereas it would be advantageous to  
“ trade in Scotland, that promissory-notes were allowed the  
“ like summary execution and other privileges with bills ;”  
be it therefore enacted by the authority foresaid, That from  
and after the 15th day of May 1772, the same diligence and  
execution shall be competent, and shall proceed upon promissory-notes, whether holograph or not, as is provided to pass upon bills of exchange and inland bills by the law of Scotland, and that promissory-notes shall bear interest as bills, and shall pass by indorsation, and that indorsees of promissory-notes shall have the same privileges as indorsees of bills in all points.

“ XXXVII. And whereas the not limiting bills and promissory-notes to a moderate endurance in Scotland has  
“ been found by experience to be attended with great inconveniences ;” for remedy whereof, be it enacted, That no bill of exchange, or inland bill or promissory-note executed after the 15th day of May 1772, shall be of force or effectual to produce any diligence or action in Scotland unless such diligence shall be raised, or action commenced thereon,

within the space of six years from and after the terms at which the sums in the said bills and notes became exigible.

XXXVIII. And be it further enacted, That no bill of exchange, or inland bill or promissory-note which has been or shall be granted before the said 15th day of May 1772, shall be of force or effectual to produce any diligence or action unless such diligence has been or shall be raised, or action has or shall be commenced thereon before the expiration of six years from and after the said 15th May 1772.

XXXIX. Provided always, That no notes commonly called bank-notes or post-bills, issued or to be issued by any bank or banking company, and which contain an obligation of payment to the bearer, and are circulated as money, shall be comprehended under the aforesaid limitation or prescription; and that it shall and may be lawful and competent at any time after the expiration of the said six years, in either of the cases before mentioned, to prove the debts contained in the said bills and promissory-notes, and that the same are resting and owing by the oaths or writ of the debtor.

XL. And it is hereby enacted and declared, That the years of minority of the creditors in such notes or bills shall not be computed in said six years.

XLI. And it is further enacted, That all inland bills and promissory-notes shall be protested in like manner as foreign bills before the expiration of the three days of grace, otherwise there shall be no recourse against the drawers or indorsers of such inland bills, or against the indorsers of such promissory-notes; and it shall be sufficient to preserve the said recourse, if notice is given of the dishonour within fourteen days after the protest is taken, without prejudice to the notification of the dishonour of foreign bills, to be made within such time as is required by the usage and custom of merchants.

XLII. And be it further enacted, That from and after the said 15th day of May 1772, summary execution by horn-

ing or other diligence shall pass upon bills, whether foreign or inland, and whether accepted or protested, for non-acceptance, and upon all promissory-notes duly negotiated, not only against the drawers of such bills, and the whole indorsers of the said bills and notes, jointly and severally, excepting where the indorsation is qualified to be without recourse, saving and reserving to the drawers or indorsers their respective claims of recourse against each other, and their defences against the same according to law.

XLIII. And be it also enacted, That from and after the said 15th day of May 1772, summary execution by horning or other diligence shall be competent to the indorsee of a bill, although the protest is not in the name of the indorsee craving the diligence, and although the bill is not reconveyed to him by indorsation, if he produces a receipt for the value by act of honour, or a missive letter from the protesting indorsee, mentioning the dishonour, agreeably to the practice of merchants in returned bills.

Continued by 20. of Geo. III. *cap.* 41, and rendered perpetual by 23. of Geo. III. *cap.* 18, of which § 55. declares,

That the same diligence and execution shall be competent, and shall proceed upon promissory-notes, whether holograph or not, as is provided to pass upon bills of exchange and inland bills by the law of Scotland; and that promissory-notes shall bear interest as bills, and shall pass by indorsation; and that indorsees of promissory-notes shall have the same privileges as indorsees of bills in all points.

The statute 18. of Geo. III. *cap.* 18, “to explain  
“the act 7. of Geo. II. for the more effectual prevent-  
“ing the forgery and acceptance of bills of exchange,”  
&c. declares,



That if any person from and after the 25th day of March 1778, shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting, any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intention to defraud any corporation whatsoever; or shall utter or publish as true any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money or delivery of goods, with intention to defraud any corporation whatsoever, knowing the same to be false, altered, forged, or counterfeited; every such person, being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

As to the prescription of bills, see title "*Prescription.*"

Erskine, III. 2. 28.—Bell, I. 386, 5th edit.—Thomson on Bills.—Chitty on Bills.

#### DECISIONS.—ACT 1696, *cap.* 25.

Brand v. Trustees of Riccarton, Mor. pp. 1679 & 12336.—Walkinshaw's Executors v. Campbell, *ibid.* 1684.—Nelson v. Russell, 14. Feb. 1734, *ibid.* 1435 & 1508.—M'Caul v. Logan, June 1728, *ibid.* 1694.—Henderson v. Davidson, 27. July 1738, *ibid.* 1435 & 1686.—Sandilands v. Dickson, 12. Nov. 1742, *ibid.* 1436.—Turnbull v. Tudhope, 18. June 1748, *ibid.* 1437 & 1510.—Cathcart v. Dick's Representatives, 17. Nov. 1748, *ibid.* 1439.—Douglas, &c. v. Logan, 19. Nov. 1748, *ibid.* 1438.—Bruce & Guthrie v. Hutchison, 6. Dec. 1748, *ibid.* 1514.—Bonnar v. Grant, 14. Feb.

1749, *ibid.* 1441.—Ferguson v. Blair, 31. July 1758, *ibid.* 1443.—Shaw v. Farquhar, 24. Nov. 1761, *ibid.* 1444.—Robertson, &c. v. Bisset, 25. July 1777, *ibid.* 1445 & 1676.—Drummond, 8. Feb. 1785 & Geddes, 22. Nov. 1786, *ibid.* 1446.—Fair v. Cranstoun, 11. July 1801, *ibid.* 1677.—Ogilvie v. Moss, 28. June 1804, *ibid.* App. p. 21. v. “*Bill*,”—M‘Donald’s Trustees v. Ranken, 13. June 1817, F. C.

ACTS 1681, 20.—and 1696, 36.

Cowan v. Kay, 20. June 1795, Mor. p. 1621.—Blair v. Oliphant, 8. June 1708, Mor. 473.

ACTS 12. Geo. III. c. 72. AND 23. Geo. III. c. 18.

Anderson v. Bolton, &c. 26. Jan. 1810.—Thomson, 2. July 1812, F. C.—Robertson v. M‘Glashan, 6. Feb. 1787, Mor. 11129.—Young v. Buchanan, 24. Jan. 1799, Mor. 8137.—Hay v. Stewart, 11. July 1745, Elchies, No. 6. v. “*Assignation*.”—Foggo & Galloway v. Scott & Oliver, Dec. 1769, F. C.—Elliot v. Richmond & Pollock, 5. Aug. 1775, Mor. p. 1602.—Mackie, &c. v. Hilliard & Co. 15. June 1822, Shaw, I. 499.—Armstrong v. Johnston, 16. May 1804, Mor. 11140.—Trustee of Thomson & Co. v. Craig & Hunter, 10. Dec. 1818.—M‘Tavish v. Lady Saltoun, 2. Feb. 1821, F. C.—See Title “*Prescription*.”

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## BONDS HERITABLE AND MOVEABLE.

The general rule of law is, that personal bonds, being moveable, fall to the executor of a person deceased. But, when such bonds are payable to heirs and assignees secluding executors, they are held to be heritable, and to belong to the heir and not the executor. This

is declared by the act 1661, *cap.* 32, which is in the following terms :

Our Sovereign Lord, with advice and consent of his Estates of Parliament, for many just and reasonable causes moving him, statutes and ordains, That all contracts and obligations for sums of money payable to parties at any time, made and dated since the 16th day of November 1641, or to be made in time coming, containing clauses for payment of annual-rent and profit, are, and shall be, holden and interpret to be moveable bonds, except in these cases following, viz. That they bear an express obliegement to infest, or that they be conceived in favours of heirs and assignes, secluding executors, in either of which cases, ordains the sums to be heritable, and to pertain to the heir ; otherwayes to be confirmed by the executor, and to appertain to the nearest of kin, and to the defunct's executors and legators, according to the law and practick of moveables: Declaring alwayes, that all such bonds, *quoad fiscum*, shall remain in the same condition as they were before the said 16th of November 1641, not to fall under the compass of single escheat, nor shall any part thereof pertain to the relict, *jure relictæ*, where the bonds are made to the husband, nor to the husband, *jure mariti*, where the bonds are made to the wife, unless the relict, or husband, have otherwayes right and interest thereto : Declaring nevertheless, that this provision shall no way prejudice wife, nor husband, and their executors, of their respective titles and interests to the by-gone annualrents of the saids bonds, resting before either of their deaths.

Erskine, II. 2. 19.

Stewart v. M'Farlan, 9. July 1765, Mor. p. 5510.

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BRIEVES.

A brief is the King's letter or command to some of his judges to try the particular question therein set forth. From the older statutes, as recorded in the *Regiam Majestatem*, it appears that briefes were used in all cases in Scotland in place of the present summons. In England, this form is still continued.

There are several statutes respecting the brief of right and the brief of *nouvel disseisin* as being pleadable briefes:—others regulating the falsing of dooms, or the manner in which a defender formerly brought on his defence, where he had any exceptions to propone against the brief: and a third class discharging all exceptions against the brief of mortancestry as not being a pleadable brief, (1429, 127,—1471, 42.) But all these forms are completely obsolete.

The only statutes of which it is necessary to take notice under this title, are those relative to briefes of inquest, being the command of his Majesty, directed to a judge, to ascertain the truth of the proposition stated in the brief by the verdict of a jury. These statutes give a description of the mode of publishing briefes,—of the exceptions that are competent,—of the contents of the *retour*, and of the limited time and manner in which an erroneous service may be challenged.

This act 1471, *cap.* 48, relative to wilful and ignorant error of assize, is as follows :

*Item*, For the eschewing of man-swearing of false assise

and inquests in greate hurting of our Sovereine Lordis lieges, and specially be inquestes in heritages ; it is statute and ordained, That in time cumming, quhair a partie findis him grievied be ony assise or inquestes, be partial malice or ignorance of the assise or inquestes, saifand and exceptand the assise of briefes pleidabill, quhilk this statute sall not extend upon, it sall be leiffull to the partie grievied to cum to our Sovereine Lorde and his Councell, and take a summoundes of the said inquest, to compeir before them at certaine daie and place peremptourly, and there produce his evidences of the ignorance or falsed of the said inquest : And gif it happenis him to proove the said falsed, the partie grievied sall be reduced to the condition, that it was in of before, or the said inquest or assise proceeded, and the determination of the said assise or inquest to be of nane availe, and the saidis persones of the assise or inquestes to be punished after the forme of the Kingis lawes, in the first buik of the Majestie, *contra temere jurantes super assisam* : And gif the partie compleinzieand be foundin in the wrang, he sall pay ane unlaw of ten pound to the King, and make all the expenses of the partie that is summound.

The act 1474, *cap.* 56, declaring in its title that “ the retour should contain the old and new extent,” proceeds thus : “ It is statute and ordained, that it be “ answered in the retour, what the land was of avail of “ the auld, and the very avail that it was worth and “ gives the day of the serving of the said brief.”

The act 1503, *cap.* 94, relates to the “ exceptions “ to be proponed against the brieve of inquest, summons “ of assize, proclamation of briefes.” It is as follows :

*Item*, It is statute and ordained, That because there hes bene in time by-gane, great abusion in the proponing of exceptions frivoll, against the brieve of inquest, and perverted

the ordoure and nature of it, as it were ane brieve of pley ; Therefore for the eschewing of sik frivoll exceptions in time to-come, it is statute and ordained, that na exception availe against the said brieve of inquest, it beand cryed openly upon fiftene daies, with the indorsing of the officiar that cryed it, containand twa witnesses, and his seale or signet, bot the exceptions followand allanerly : That is to say, against the judge, against the inquest, and the exceptions of bastardrie, and that to be proponed in the forme of the auld law : And as anent the exception maid anent the summonding of inquest, upon fiftene dayes before, after the forme of the statute of King Robert, quhilks maks mention, that the inquest suld be summonnd upon fiftene daies before, it sall be leiffull, notwithstanding the said statute, to the schireffe or ony uther officiar that is judge to the brieve of inquest, to summonnd the said inquest upon quhat daies he pleasis, or upon schort time, notwithstanding the saide statate : And gif they be present in the tol-buith un-summounded, sa that there be nane uther lauchful exception against them, it sall be leiffull to the schireffe or officiar to compell them to passe upon the said inquest : And attour, because there hes bene ane abusion in the crying of the Kingis brieves in stewartries and bailleries, quhair they were cryed at ane hill, na confluence of people being there, throw the quhilk na knowledge thereof micht cum to the partie ; herefore it is statute and ordained, that all manner of brieves of inquest sall be cryed at the mercat croce of the burgh openly in plaine mercat, quhen maist confluence of people is gaddered, swa that the crying thereof may cum to the knowledge of the partie defender, quhair it suld be served, and quhat day : and that the said brieve be thrise cryed plainly togidder, and betwixt ilk crying the space of all the three cryinges : And that all officiares of the towne be warned to compeir at the said proclamation to beare witnes : And gif it sall happen, that the antecessor of ony clamand richt, decease sa nere the terme

of Whitsunday and Martinmes, that the persewer may not get it upon ane mercate day, for nearnes of the terme of Whitsunday or Martinmes; in that case, it sall be leifful to him to gar cry his brieve upon ony oulke day, swa that he have the officiares of the towne, and part of the honest persones to the number of sex persones, saifand to our Sovereaine Lord his warning upon fourtie daies, áfter auld use and consuetude.

To secure publicity in the serving of brieves, the act 1587, *cap.* 60, declares,

That all brieves for service of landes, lyand within the bounds of the stewardries of Stratherne and Menteith, sall be proclaimed at the mercat crosse of Perth, and to be served at the places used and woont within the saids stewardries: All within the stewartrie of Fife, be open proclamation at the mercat-croce of the burgh of Couper in Fife: All within the bailleries of Kyle, Carrict, and Cunninghame, at the mercat-croce of the burgh of Air: All within the stewartries of Kirkcudbright and Annandail, at the mercat-croce of Drumfreis; and that the places of serving of brieves, and halding of courtes to that effect, be alwayes in the tolbuith of the head burgh of the schire, stewartrie or baillierie, or uther pairtes within the same stewartries and bailleries, quhair brieves were maist usually served, and courtes halden to that effect of before.

The retour cannot be challenged upon any ground after the lapse of twenty years from its date. If the true heir mean to pursue a reduction of it on the special ground of wilful error in the jury, he must do so within three years. This limitation is fixed by the statute 1494, *cap.* 57, explained by the later act 1617, *cap.* 13. See title "*Prescription.*"

By statute 1. and 2. of Geo. IV. *cap.* 38, § 11, briefes are prohibited to be directed to macers. All services now proceed before the Sheriff-depute of Edinburgh, or his substitute.

Where there is a competition of briefes, or any opposition to the service, advocacy is competent to the Court of Session. The above act is quoted entire in the title "*Court of Session.*"

Act of Sederunt, 25. Feb. 1824.

Stair, III. 5.—Erskine, III. 8. 59.

Forbes, 12. Aug. 1753, Mor. 14431.—Lord Charles Hay, 30. June 1758, Mor. 14369.

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## BURGH ROYAL.

A royal burgh is a portion of the community incorporated by charter from the crown, conferring certain privileges, and a power of electing magistrates. This elective franchise is a branch of the royal prerogative in the hands of subjects. Every burgh has a set or constitution peculiar to itself; either fixed by the Convention of Royal Burghs, or settled by a formal act of the Town-Council,—the set in either case being recorded in the books of the Convention. The statutes on this subject relate to a great many minute particulars: for the sake of perspicuity, they shall be noticed under the following arrangement:



- I. Those relative to *Constitution and Government.*
- II. \_\_\_\_\_ *Election.*
- III. \_\_\_\_\_ *Common Good.*
- IV. \_\_\_\_\_ *Weights and Measures.*
- V. \_\_\_\_\_ *Taxation, Watching and Warding, &c.*
- VI. \_\_\_\_\_ *Roads.*
- VII. \_\_\_\_\_ *Trade, and Exclusive Privilege.*
- VIII. \_\_\_\_\_ *Prisons.*
- IX. \_\_\_\_\_ *Convention of Burghs.*
- X. \_\_\_\_\_ *Ruinous Houses in Burgh.*
- XI. \_\_\_\_\_ *Arresting Strangers.*
- XII. \_\_\_\_\_ *Seisins in Burgh : and*
- XIII. *The Acts which ratify and confirm the Privileges of Royal Burghs.*

#### I. CONSTITUTION AND GOVERNMENT.

Originally the charters from the crown in favour of royal burghs were intended principally for the benefit of particular incorporations, on whom certain privileges were thus conferred with the view of promoting commerce. Afterwards, however, these charters assumed the form of feudal grants in favour of the burgesses and community in general, extending these privileges, and giving a power of electing magistrates ; and an annual payment in money was stipulated as the *reddendo* of the charters.

Under this division, there are two statutes worthy of notice. The act 1555, *cap.* 49, “ anent the liberties “ and privileges of burghs,” is as follows :

The Queen's Grace, Dowager and Regent of this realme, with advise of the haill three Estaites of Parliament, understanding clearelie, that the estaite of burgesses thir mony zeires bygane, be great trouble of weires, hes susteined infinite skaith baith in their landes and gudes, and als that their priviledges granted to them, be our Sovereaine Ladies maist noble progenitoures, and actes of Parliament maid thereupon, hes not bene observed nor keiped to them, as accordis: Therefore the Queenis Grace Regent, with advise of the three Estaites foresaidis, hes ratified and apprieved, and rafies and apprievis all priviledges and actes of Parliament, granted and maid in favoures of burrowes, burgesses, and merchandes: and hes statute and ordained, that letters be direct be the Lordes of Councell, at the instances of all burrowes, upon their priviledges and actes of Parliament maid thereupon in all times to cum, for putting of the samin to dew execution with all rigoure, against them, that dois or cummis in the contrair of their saidis priviledges and actes foresaidis, without calling of ony partie.

And the act 1587, *cap.* 112, bearing as a title, "that  
" na burgh may sell their freedom without consent of  
" the Parliament," declares,

That it sall not be lauchfull to onie of his Hienesse free burrowes, to sell or annalie their freedome and priviledge, in haill or in part, to onie uther burgh, or utherwayes quhatsumever, without expres licence and consent of his Hienesse and three Estaites in Parliament, under the paine of amission and tinsell of the freedome of the burgh: Outher byand or selland the saidis freedomes, in haill or in part, as said is.

The acts which relate to the government, or whereby the authority of the magistrates is enforced, are three in number. The act 1535, *cap.* 27, declaring "that  
" na man trouble nor molest the provost, aldermen,

“baillies and officiares within burgh,” provides as follows :

That na man, earle, lorde, barronne, or uther of whatsumever degree about and adjacent nichtboures to burrowes, molest, trouble, nor inquiet the provest, aldermen, baillies and officiares of burrowes, and merchandes thereof, in using of their franchies, liberties, and priviledges, granted to them be our Soveraine Lord, and his predecessoures, Kingis of Scotland, and in contrair the acts and statutes maid thereupon, under the paine to be called and accused as commoun oppressoures of our Soveraine Lordis lieges, at general justice aires, or private diettes, and justice courtes, as sall be thocht expedient be the Kingis grace : and that the justice-clerke take inquisition and dittay hereof, as effeiris.

The statute 1568, *cap.* 83, “anent the staunching of tumults within burgh,” declares,

That nane of our Soveraine Ladies lieges presume, pretende, or take upon hand to make onie privie conventiones nor assemblies within burgh, put on armour, cleeith themselves with weapones, or make sound of trumpet or talbrone, or use culveringes, displayed banners, hand seinzeirs, or uthers instruments bellical quhatsumever, in onie time hereafter, without the special licence of our said Soveraine Lady, and her Hienes magistrates within the burgh, quhair the said tumult and uproare chauncis to be, had and obtained theirto, under the paine of death : Providing, that the raising and convening of the inhabitants of the saidis burrowes be the magistrates, for execution or repressing of malefactours be justice, be not comprehended under this acte.

And the act 1606, *cap.* 17, “for suppressing unlawful conventions in burghs,” declares,

That na person nor persons within burgh, of whatsoever rank, qualitie or conditioun they be of, presume nor take upon hand from this forth, under whatsoever cullour or pretext, to convocat or assemble themselves together at any occasion, except they make due intimation of the lawful causes of their meetings to the provest and baillies of that burgh, and obtaine their licence thereto; and that nathing be done nor attempted by them in their saids meetings, whilk may tend to the derogation or violation of the acts of Parliament, lawes and constitutions made for the well and quyetnesse of the saids burghs: Declaring by thir presents, the saids unlawfull meetings, and the persons present thereat, to be factious and seditious, and all proceedings therein to be null and of nane avail, and the saids persons to be punished in their bodies, goods and geare, with all rigour, conforme to the laws of this realme.

And to the effect the saids unlawfull meetings, with all others tumults, turbulances, and pleyes, that shall happen to fall out within the saids burrowes, may be substantiousely suppressed, ordeins the haill inhabitants of the saids burrowes, at all occasions, to readilie assist and concur with the magistrats and officiars thereof, for setling of the saids tumults and turbulances, and punishing of the saids authors and movers thereof; and sik as shall not concur and assist with the saids magistrats readilie, or their officiars, for reding and setling of the saids tumults and turbulances, as said is, shall be reput and halden as fosterers and mainteiners of the saids tumults, and punished therefore in their persons, and unlawed in their goods, at the arbitrimint of the magistrats and councell of the said burgh, and ordeins publication to be made hereof, at the market crosses of the saids burrowes, that nane pretend ignorance thereof.

DECISIONS—CONSTITUTION OR SET.

*Wilson v. Magistrates of Queensferry*, 2. Jan. 1668, Mor. p. 1835.—*Johnston, &c. v. Ramsay*, 28. Feb. 1672, *ib.*

Sup. I. 682.—Trades of Burntisland, 20. Jan. 1681, *ib.* 1836, and Sup. III. 387.—Jack v. Town of Stirling, 27. Jan. 1681, *ib.* 1838.—Trades, &c. of Inverness v. Duff, Feb. 1724, *ib.* 1839.—Cunningham, &c. v. Henderson, 29. Jan. 1745, *ib.* 1840.—Dalrymple v. Stodart, 7. Aug. 1778, *ib.* 1861.—Trades of Dumfries v. the Town-Council, 26. Feb. 1736, *ib.* 1840.—Election of Rutherglen, 3. July, 1747, Elchies, No. 26. v. *Burgh Royal*.—Election of Wick, 12. Jan. 1749, *ib.* No. 29.—Anderson v. Magistrates of Wick, 17. Feb. 1749, Mor. p. 1842.—Trades of Burntisland, Dec. 1752, Elch. No. 37. v. *Burgh Royal*.—Dunbar v. M'Leod, 7. Jan. 1757, Mor. 1855.—Boyle v. Cumming, 11. March 1757, *ib.* 1857.—Fotheringham v. Langlands, 13. Dec. 1776, *ib.* 1861.—Chalmer v. Town-Council of Edinburgh, 24. July 1782, *ib.* 1863.—Mill v. Magistrates of Montrose, 28. Jan. 1824, reversed on appeal 28. June 1825.

## GOVERNMENT.

Town of Aberdeen v. Lesk, 11. Jan. 1678, Mor. p. 1866.—Bakers v. Magistrates of Glasgow, 7. July 1696, *ib.*—Magistrates of Aberdeen, 17. June 1715, *ib.* 1868.—Banks, &c. v. Jeffrey, &c. 6. June 1792, *ib.* 9384.—Gibsons, Thomson and Craig, 13. Nov. 1810, F. C.—Turnbull, &c. v. Magistrates of Edinburgh, 24. Jan. 1812, *ib.*

## II. ELECTION.

The statutes on this point shew what persons are capable of being chosen magistrates.

The first is the act 1469, *cap.* 30, and consists of three branches, as the title announces :—" officers within burgh should not be continued :—the old council should choose the new :—these two choose the officers." It is in the following terms :

Touching the election of **officiars** in burrowes, as aldermen, baillies, and uther **officiars**, because of great contention zeirly for the chusing of the samin, throw multitude and clamour of commones, simple persones, it is thought expedient that na **officiars** nor council be continued after the Kingis laws of burrowes, further then an zeir bygane and to cum : And that the chusing of new **officiars** be in this wise : that is to say, the auld council of the towne sall chuse the new council, in sik number as accordis to the towne : And the new council and the auld in the zier foresaid sall chuse all **officiars** pertaining to the towne, as alderman, baillies, deane of gild, and uther **officiars**. And that ilk craft sall chuse a person of the samin craft, that sall have voit in the said election of **officiars**, for the time, in likewise zeir by zeir. And attour it is thought expedient, that na captaine nor constable of the Kingis castelles, quhat towne that ever they be in, sall beare office within the said towne, as to be alderman, baillie, dean of gild, thesaurar, nor nane uther **officiar** that may be chosen be the toun, fra the time of the nixt chusing foorth.

Prior to this act, the election of magistrates was under the control of the Chamberlain of Scotland.

The act 1474, *cap.* 57, ratified by 1487, *cap.* 108, bears, “ that four of the old council be chosen to the “ *new*,” and is as follows :

It is statute and ordained in burrowes, notwithstanding the actes maid of before, that there sall be of the auld counsell of the zeir before, foure worthy persones chosen zeirly to the new counsell, at their entrie to sit with them, for that zeir, and have power with them to do justice.

The purpose of the ratification is declared to be, “ so “ that the election of officers might be of the best and

“worthiest indwellers of the town, and not by partiality nor mastership, quilk is undoing of burghs where masterships and requests come.”

The act 1503, *cap.* 80, bearing, “that all officers in burgh be changed yearly,” declares,

That all officiares, provestes, baillies, and uthers havand office of jurisdiction within burrowes, be changed zeirly, and that nane have jurisdiction within burgh, bot gif they use merchandice within the said burgh.

The act 1503, *cap.* 84, declares, that merchants and burgesses are to enjoy their old privileges.

In the act 1503, *cap.* 86, there is the following description of the manner in which a burgess is made :

It is statute and ordained, that in time to cum, na provest, baillie, nor alderman of ony townes, make burgesses, nor gild-brether, without the consent of the great counsell of the towne, and that the profite that is tane for the making of ilk burgesse or gilde be put to the commoun gud, and wared on the commoun warkes.

Besides these acts, passed on purpose to regulate the mode of election, there are clauses relative to this point in other statutes having a different object as their leading one. Thus, in the act 1535, *cap.* 26, there is the following provision : “That no man in time coming be chosen provost, bailies, or aldermen into burgh, but they that are honest and substantious burgesses, merchants and indwellers of the said burgh, under the pain of tinsel of their freedom, who do in the contrary.” The rest of the act relates to the common good of burghs.

In like manner, in the act 1609, *cap.* 8, being an “act of the apparel of judges, magistrates and kirk-men,” there is the following declaration : “That no man shall, in any time coming, be capable of provostry or other magistracy within any burgh of this realm ; nor to be elected to any of the saids offices within a burgh, but merchants and actual traffickers inhabiting within the said burghs allenary, and no others.”

The statute 1689, *cap.* 22, “for a new election of magistrates in the several royal burghs,” seems to have been intended for a temporary purpose.

In the statute 7. of Geo. II. *cap.* 16, “for the better regulating the election of members to serve in the House of Commons for that part of Great Britain called Scotland,” &c. there is the following clause : “And to prevent double elections of magistrates in boroughs, which frequently occasion double commissions to delegates, be it enacted by the authority aforesaid, That at the annual election of magistrates and councillors for boroughs, no magistrate or councillor, or any number of magistrates, shall for the future, upon any pretence whatever, take upon him or them to separate from the majority of the magistrates and councillors, who have been such for the year preceding, and to appoint or elect separate magistrates or councillors, but shall submit to the election made, and to the magistrates and councillors elected and appointed by the majority of the Town-Council assembled : and if, contrary to the direction of this act, any number of magistrates or councillors shall, in opposition to the majority, take



“ upon them to make a distinct and separate election of  
“ magistrates or councillors, their act and election shall  
“ be *ipso facto* void ; and every magistrate or coun-  
“ cillor who concurred therein shall forfeit and lose  
“ the sum of £. 100 Sterling, to be recovered by the  
“ magistrates and councillors from whom they separa-  
“ ted in manner herein after directed : Provided al-  
“ ways, and it is hereby declared and enacted, that it  
“ shall and may be lawful to and for any magistrate or  
“ councillor of the borough, who apprehends any wrong  
“ was done at any annual election, to bring his action  
“ before the Court of Session in Scotland for rectifying  
“ such abuse, or for making void the whole election,  
“ (if illegal,) only within the space of eight weeks after  
“ such election is over : And the Lords of Session shall,  
“ and they are hereby expressly authorised and requir-  
“ ed to hear and determine the cause summarily, and  
“ to allow to the party that shall prevail their full costs  
“ of suit.”

And, in the act 16. of Geo. II. *cap.* 11, being an  
act “ to explain and amend the laws touching the elec-  
“ tions of members to serve for the Commons in Par-  
“ liament for that part of Great Britain called Scot-  
“ land,” &c. there is the following provision : “ And  
“ be it further enacted, by the authority aforesaid, that  
“ no person elected to be a magistrate or councillor by  
“ a minority of those having right to vote in elections  
“ of the magistrates and councillors, shall, upon any  
“ pretext whatsoever, presume to act as magistrate or  
“ councillor, and if any person shall, notwithstanding,  
“ presume to act as magistrate or councillor, he shall

“ for every such offence, forfeit the sum of £.100 Sterling to the magistrates or councillors elected by the majority; or to any of them who shall sue for the same, to be recovered by him or them in the manner herein after directed.” Then follows a clause declaring it competent for any member at a meeting for election of magistrates, or of any meeting previous to that for election of magistrates respectively, who apprehends wrong done in the sense of the act, to apply by complaint to the Court of Session any time within two months after the annual election of magistrates : and the Court are directed to dispose of the complaint summarily, and to award full costs to the successful party. To which is added a clause declaring it lawful for the magistrates and councillors “ to take and subscribe the oath of allegiance, subscribe the assurance, and take and sign the oath of abjuration, before the council of their respective boroughs :” and this in place of the former practice of taking these oaths in one or other of the Courts of Session, Justiciary, or Exchequer, or at the Quarter Sessions. The statute 14. of Geo. III. *cap.* 81, is in the following terms :

An act for altering and amending an act made in the sixteenth year of his late Majesty's reign, intituled, An act to explain and amend the laws touching the elections of members to serve for the Commons in Parliament, for Scotland ; and to restrain the partiality, and regulate the conduct, of returning officers at such elections, by altering the time of notice, ordered by the said act to be given, in the service of complaints to the Court of Session, of wrongs done in elections, and by regulating the manner, and settling the place, of election of a burgess to serve in Parliament for a district

of boroughs in Scotland, when the election of the magistrates and council of a borough, which ought in course to be the presiding borough at an election, happens to be reduced and made void, by a decree of the Court of Session, and not revived by the crown, when such election is made :  
“ Whereas by an act made in the sixteenth year of his late Majesty’s reign, intituled, An act to explain and amend the laws touching the elections of members to serve for the Commons in Parliament for that part of Great Britain called Scotland ; and to restrain the partiality, and regulate the conduct, of returning officers at such elections ; complaints to the Court of Session, for redress of wrongs committed by the enrolling, or refusing to enroll, persons claiming to be enrolled in the roll of freeholders, or in the annual election of royal boroughs, are ordered to be served upon thirty days’ notice : And whereas it is found by experience, so long notice is unnecessary, and occasions delay in the summary determination of such complaints, agreeable to the intendment of the said act,” may it therefore please your Majesty, That it may be enacted, and be it enacted, &c. That from and after the 12th day of June in the year of our Lord 1774, the Court of Session shall grant warrants for the service of all such complaints on fifteen days’ notice.

“ II. And whereas the elections of magistrates and counsellors of royal boroughs in Scotland have sometimes been reduced and made void by decrees of the Court of Session, in actions or complaints brought before the said Court for that purpose, by which the corporate powers of such borough are in effect in a state of non-existence, until restored by the justice and favour of the crown : And whereas no provision is made in the foresaid act of the sixteenth year of the reign of his late Majesty, or any other act now in being, for regulating the manner, and settling the place of election of a burghess to serve in Parliament for a

“ district of boroughs in Scotland, when the election of magistrates and council of a borough, which ought in course to have been the presiding borough at the election, happens to be reduced and not revived when the election is made;” for remedy thereof, be it enacted, That in every election of a burgess to serve in Parliament for a district of boroughs in Scotland, when the election of magistrates and council of a borough which ought in course to have been the presiding borough at such election is reduced and not revived, the next borough entitled to preside in turn shall be the presiding borough, and the election shall be made at that borough; and the commissioner for that borough shall be the president of the meeting of commissioners for the election, and have a casting and decisive vote besides his own as commissioner, where the votes of the commissioners are equal: and the common clerk of that borough shall be clerk to the election; and every matter and thing concerning the election shall be proceeded in as if that borough had been the presiding borough, in the ordinary course of rotation.

III. And be it further enacted, &c. That the borough which would have been the presiding borough at the election, if the election of the magistrates and counsellors of such borough had not been reduced, shall, when revived by the justice and favour of the crown, have no right or title to be a presiding borough, in the election of a burgess to serve in Parliament for the district of boroughs of which it is one, until the other boroughs of the district, each in their turn, have successively presided, and that the right devolves upon such borough in the ordinary course of rotation.

Erskine, II. 4. 8.—Wight on Elections, p. 343.

#### DECISIONS.

Urquhart, 17. Jan. 1758, Mor. p. 15079.—Banks, &c. v. Jeffrey, &c. 6. June 1792, F. C.—Mason, &c. v. Magistrates

of St Andrew's, Elchies, No. 3. *v. Burgh Royal*.—Tod *v. Davidson*, 17. June 1824, S. & D.—Meiklejohn *v. Masterton*, 28. May 1805.—Cunningham, &c. *v. Henderson*, &c. 31. July 1745.—Haldane, &c. *v. Holburn*, &c. 4. Aug. 1761.—Case of Inverkeithing in 1745, Elchies, No. 22. *v. Burgh Royal*.—Smollet, &c. *v. Buntein*, &c. 19. Feb. 1730, Craigie & Stewart's Cases, I. 26.—Magistrates of Aberbrothock, 1. July 1740.—Ramsey *v. Martin*, &c. 28. Jan. 1767, affirmed.—Alexander, 11. March 1768.—Brechine, 14. Jan. 1727. Young *v. Johnston*, 7. Aug. 1767.—M'Kenzie *v. Scott*, 7. Aug. 1759, West Anstruther, 1767.—Paterson, &c. *v. Magistrates of Stirling*, 1. March 1775.—Hutcheson, &c. *v. Tod*, &c. 17. May 1823, F. C.—Hutton, &c. *v. Knox*, &c. 23. July 1774, Hailes, p. 588.—High *v. Main*, 6. Aug. 1789.—Fleming *v. Gray*, 6. July 1810.—Fleming, &c. *v. Urie*, &c. 9. May 1776.—Mason *v. Magistrates of Montrose*, 15. Nov. 1821.—Town-Council of Selkirk *v. Henderson*, &c. 3. Feb. 1761.—Ogilvy *v. Magistrates of Edinburgh*, 6. Feb. 1810.—Jaffray *v. Magistrates of Stirling*, 21. July 1741.—Meiklejohn, &c. *v. Martin*, &c. 26. Nov. 1812.—Perth Election, 11. Feb. 1731, Elchies, No. 16. *v. Burgh Royal*.—Jack *v. Town of Stirling*, 27. Jan. 1681.—Gilchrist *v. Provost*, &c. of Kinghorn, 5. March 1771.—Anderson, &c. 19. Nov. 1748.—Magistrates of Burntisland, 15. Dec. 1752.—Tenant and Gray *v. Johnston*, &c. 23. Feb. 1785. Monro, &c. *v. Forbes*, &c. 3. May 1785.—Laurie, &c. *v. Magistrates of Edinburgh*, 1818–19.—Dunbar, &c. *v. M'Leod*, &c. 7. Jan. 1757.—Andrew, &c. *v. Gillies*, &c. 24. Jan. 1775.—Anderson, &c. *v. Affleck*, &c. 4. March 1785.—Hope, &c. *v. Magistrates of Selkirk*, 2. June 1827.—Hunter-Blair *v. Phin*, 31. Jan. 1781.—Lord Daer, 24. Jan. 1792.—Donaldson, 29. July 1789.—Review by

Court of Session, illustrated by Connell on Elections, p. 350.

### III. COMMON GOOD.

There are various statutes which declare the duties and the powers of magistrates with regard to the revenues or common good of burghs.

The act 1491, *cap.* 36, intended to point out “ how “ the common good of burghs should be spended and “ set to others,” is as follows :

Item, It is statute and ordained, anent the commoun gude of all our Sovereine Lordis burrowes within the realme, that the said commoun gude be observed and keiped to the commoun profite of the towne; and to be spended in commoun and necessarie thinges of the burgh, be the advise and counsell of the towne for the time, and deakons of craftes quhair they are ; and inquisition zeirly to be taken in the chalmerlane aire of expenses and disposition of the samin. And at-tour, that the rentes of the burrowes, as landes, fishinges, fermes, mailles, milnes, and waters, zeirly revenues be not set, bot for three zeires allanerly ; and gif ony happenis to be set utherwaies, that they be of nane availe, force nor effect, in time to cum.

In the statute 1535, *cap.* 26, (formerly noticed,) there is the following clause :

That all provestes, baillies, and aldermen of burrowes, bring zeirly to the checker, at the day set, for giving of their compts, their compt buiks, of their commoun gudes, to be seene and considered be the lords auditours, gif the samin

be spended for the commoun weill of the burgh or not, under the paines foresaids. And that the saidis provest, bailies, and aldermen of everie burgh, warne zeirly, fifteen daies before their cumming to the checker, all they quha likis to cum, for the examining of the saidis compts, that they may argune and impugne the samin as they please, swa that all murmure may cease in that behalfe.

The act 1593, *cap.* 181, bearing that "the common good of burghs should be roused and employed to the common weal of the burgh," contains this provision: "That the common good and patrimony of all burghs within this realm shall be yearly bestowed at the sight of the magistrates and council of the said burghs, to the doing of the common affairs thereof allenarly, after the yearly rousing and setting thereof, as use is, conform to his Majesty's former acts and statutes made anent the employing of the common good within the said burghs: and that the same be no otherwise bestowed or converted to whatever use or alteration made thereanent in whole or in part."

And the act 1693, *cap.* 28, declares the intention of the Crown to appoint commissioners for inquiring into the condition and state of the common good and revenues whatsoever of all the royal burghs; and how the same hath been heretofore, or shall be hereafter, employed or misemployed; and to the malversers and misemployers to make account; and to ordain and decern them, and every one of them, to refund and repay, or otherwise repair the burgh or burghs by them lesed, as the said commissioners shall find them liable: and, to prevent any future misapplication of these revenues, the act proceeds:

And further, that it shall not be lawful for hereafter to the magistrates and town-council of any burgh-royal, to contract any debt, or give bond for the same, obliging them and their successors in office, without a previous act made in the town-council, in their fullest convention, both of merchants and deacons of crafts, condescending upon the causes and uses for which the said debts are contracted, and bonds granted; certifying the foresaid magistrates and others who shall contract debts, and grant bonds, without the said previous act, or if the causes and uses condescended on in the said act shall not be found to be just, true and real, that, in any of the said cases, the said contractors and subscribers shall be personally liable, they and their heirs and successors, in their private fortunes, to relieve and disburden the town of the said debts; and that by decret of the Lords of Session, at the instance of any burgess of any of the said burghs, who have borne the office of provost, bailie, or dean of gild within the same: But prejudice always to the right and security of the party creditor: As likewise, but prejudice to any private person's rights, as to any of the said burghs, as accords.

But the act 1695, *cap.* 42, allows

The administrators of the common good of burghs; as also, to the deacon, masters, and other administrators whatsoever of any incorporation, or body, or company incorporate, or collegiate within this kingdom, to adventure and put in money belonging to their respective administrations, for a share and part to be purchased to the said burghs and incorporations in the said company mentioned in the said act, bearing the name of The Company of Scotland trading to Africa and the Indies, in the manner and in the terms provided within the said act; and that their putting in the money of the said burghs, incorporations, under their care and charge, and adventuring the same in the said company, shall



be repute and held for a deed of lawful administration : And though the success and event thereof should happen not to be prosperous, yet it shall never be construed to be a deed of lesion against the said administrators ; but their acting in this behalf is hereby declared to be lawful and warrantable, for the security of the foresaid persons in all events.

The statute 3. of Geo. IV. *cap.* 91, “ for regulating the mode of accounting for the common good “ and revenues of the royal burghs of Scotland,” declares :

“ Whereas, it is expedient that regular accounts should “ be annually stated, and exhibited of the common good of “ the royal burghs of Scotland, showing the property and “ funds, as well as the incumbrances affecting the same, and “ the receipts and disbursements in every year ; and that regulations should be made concerning the sale, or letting “ of any part of the property of the said royal burghs, and “ the granting securities upon the same ; and that provision “ should be made for preventing and redressing any error or “ wrong that may be committed in the administration of the “ common good of the said burghs, or in collecting the cess “ or any local tax or imposition within the same : And “ whereas, it is also expedient, where the management of “ the funds of any charity is exclusively intrusted to the magistrates and town-council of any burgh, or exclusively “ to any number of them, that an account should be regularly stated and exhibited of the said funds and administration thereof :” Be it therefore enacted, That from and after the passing of this act, a particular account of the common good and revenues of every royal burgh of Scotland, made up to the day preceding the general annual election of magistrates in each burgh, shall be annually stated and deposited in the manner directed by this act ;

which account shall be so made out as to exhibit a complete state, shewing the common good of each burgh, classed under different heads, specifying as well the amount of the debt or debts owing by each burgh, as the property thereof; also the amount of each branch of the revenue, distinguishing how much thereof shall have been received, and how much thereof shall be in arrear, or remaining unpaid at the date of such account; also the amount of all sums received, or loans contracted for, annuities granted, and sums received in consideration thereof, or on sale or alienation of property, distinguishing the same from the ordinary revenue; and also shewing every sum paid, and every sum remaining unpaid for or by reason of any expence incurred during the year, for which such account shall be so made out; distinguishing the fixed or ordinary from the casual or incidental expenditure; and also showing all cautionary obligations, positive or conditional, incurred by or on account of such burgh, distinguishing such as shall have been incurred during the year; and every such account shall be certified by the Provost, or acting chief magistrate of the burgh for that year, in words or to the effect following:

" I Provost, (*or, as the case may be, acting*  
 " Chief Magistrate, for the period between the  
 " day of and the  
 " day of *as the case may be,*) of the  
 " burgh of hereby certify, That this ac-  
 " count contains a true and complete state of the whole pro-  
 " perty and funds belonging to the said burgh, and of the  
 " debts due to and by the corporation thereof, at this date;  
 " and also a true and complete state of the revenue and ex-  
 " penditure of the said burgh, and of the cautionary obliga-  
 " tions affecting the same, to the best of my knowledge and  
 " belief, during the year commencing on the  
 " and ending on the  
 " Witness my hand, this day of  
 " in the year ."

II. And be it enacted, That if such annual account shall not be made out, and deposited in the manner and at the time herein directed, the provost, magistrates, and members of the town-council of any royal burgh failing or neglecting to make out and deposit such account, shall severally be subject to a penalty not exceeding fifty pounds each; to be recovered, with costs of suit, upon information to the Court of Exchequer, at the suit of any three or more burgesses of such burgh; one half of which penalty shall go to the common good of the said burgh, and the other half shall go to the burgesses suing for the same, or shall be applied to such purpose as the said Court shall think fit, in whole or in part, as the said Court shall direct.

III. And be it enacted, That every such annual account shall be deposited in the office of the town-clerk of the burgh to which it appertains, within three months after the annual election of the magistrates thereof; and such account shall remain there for thirty days after the expiration of the said three months, open to the inspection of the burgesses, who may state objections thereto in writing, either during that time, or within two months after the expiration of the said thirty days, and be entitled to call, in writing, for the production of any particular vouchers; and if, upon such objections being made, the party or parties making the same shall not be satisfied with the explanations which may or shall be thereupon given, it shall and may be lawful for any three or more burgesses of such burgh, within three calendar months after the expiration of the said thirty days, to make complaint in writing to the Barons of the Court of Exchequer in Scotland, who shall proceed to determine the same in a summary manner, and to make and establish such rules and regulations as to the said Barons shall seem meet, for hearing and determining all matters that may come before them upon such complaints; provided always, that no objection shall be stated in any such complaint, that had not

been previously, during the time above mentioned, stated in writing, to the accounts, unless upon sufficient cause shewn, to the satisfaction of said Barons, why such objection was not then stated.

IV. And be it enacted, That where the magistrates and members of the town-council of any burgh, or any number of them, are the sole trustees for any charity, foundation or mortification, then, and in every such case, an account shall be annually stated and certified in the manner herein before directed, distinct from the account relative to the common good and revenues of such burgh; and such account relative to such charity, foundation or mortification, shall be deposited in the town-clerk's office as aforesaid, at the same time that the annual account relative to the common good of the burgh shall be deposited there, and shall be open to the inspection of the burgesses; and if such annual account relative to such charity, foundation or mortification, shall not be so stated and deposited, then the magistrates and members of the town-council of such burgh, or such number of them as shall be trustees for such charity, foundation or mortification, shall severally be subject to a penalty of fifty pounds each, to be recovered and applied, as the said penalty, upon any provost, magistrates and members of the town-council of any burgh, neglecting to state and deposit an annual account of the common good thereof, in the manner herein directed, may be recovered and applied.

V. And be it enacted, That the magistrates and council of every royal burgh shall hereafter cause all feus, alienations, or tacks for more than one year, of any heritable property, being part of the common good of such burgh, or tacks of the common good, to proceed by public roup or auction, of which public notice shall be given by advertisement, published once, at least twenty days preceding the day of roup or auction, in some newspaper printed in such burgh, if any such newspaper is there printed, and if no such news-

paper is there printed, then in some newspaper published in the county, then in a newspaper published in the next adjoining county or counties in circulation in such burgh, and also by written or printed notices affixed, and continued upon at least three conspicuous places in the said burgh, of which the door of the principal church shall be one, at least twenty days preceding the day of such roup or auction.

VI. Provided always, and be it enacted, That no such notice of feus or alienation shall be given, until an act of the council shall be made, specifying the particulars thereof; and provided also, That such notice of sale, as is herein directed in a newspaper, shall be for the first time given during an Exchequer term, and at least twelve days before the end of such term, in order that the Court of Exchequer may grant an injunction, upon application made for that purpose by any three burgesses, against the proceeding to make any such feu or alienation, if it shall appear proper to the said Court so to do; and which injunction, the said Court is hereby empowered to grant, or otherwise to do in the matter of any such application as to the said Court shall seem just.

VII. And be it further enacted, That in future every collector or other person employed in the collection or levying of cess, stent, or any local tax or imposition leviable within any royal burgh in Scotland, shall separately and distinctly specify in every receipt to be given for the same, for what purpose, by what authority, and at what rate, or according to what rule, every such sum or imposition is demanded from the burgesses and inhabitants of such burgh, under a penalty not exceeding ten pounds for each offence; one half to be paid to the informer, and the other half to go to the common good of the burgh; to be recovered with costs of suit in the same way and manner as any penalty against any provost, magistrates, or members of the town-council may be recovered by this act.

VIII. And be it enacted, That if any feus or alienations,

or leases for more than one year, of any part of the heritable property, or tacks of the common good of any such burgh, shall be made otherwise than by public roup or auction, or without such notice as aforesaid, then the provost, magistrates, and members of the council of such burgh, making, authorising, or directing any such feus, alienations, leases or tacks, or being otherwise instrumental therein, shall severally forfeit a sum not exceeding fifty pounds each ; to be recovered and applied as the said penalty upon any provost, magistrates or members of the town-council of any burgh, neglecting to state and deposit an annual account of the common good thereof, in the manner herein directed, may be recovered and applied ; and it is hereby declared, That all such feus, alienations, leases or tacks, made otherwise than by public roup as before directed, shall be altogether void and null, save and except in the case herein before provided.

IX. And be it further enacted, That in all cases in which a complaint is allowed to be made to the Court of Exchequer under this act, it shall and may be lawful for the said Court to find and adjudge either the party or parties complaining or complained of liable in costs.

X. And be it further enacted, That in the event of no complaint being made to any annual account within the time herein limited, it shall not be competent thereafter to complain to such Court in regard to such account.

XI. And be it further enacted, That it shall not be lawful for the magistrates or town-council of any burgh, to contract any debt, grant any obligation, make any agreement, or enter into any engagement, which shall have the effect of binding them or their successors in office, unless an act of council shall have been previously made in that behalf ; and any such contract, obligation, agreement, or engagement, made or entered into without such act of council, shall be void and null as against the common good of the burgh, or

the succeeding magistrates or town-council thereof, without prejudice nevertheless to the personal liability and responsibility of the persons by whom the same may have been made or entered into.

XII. And be it further enacted, That any penalties and expenses, in which any magistrates or members of the town-council of any royal burgh may be personally subjected by virtue of this act, or any part thereof, shall on no account be paid from or taken out of the common good or revenue of such burgh: Provided always, that the parties making any complaint, or bringing any information under this act, shall, within eight days after the same shall be made or brought as aforesaid, enter into a recognizance to pay costs of suit, in case the same shall be awarded.



#### DECISIONS—COMMON GOOD.

Johnston v. Magistrates of Edinburgh, 23. July 1735, Elchies, No. 4. *h. t.*—Laing v. Magistrates of Selkirk, 28. Nov. 1748, Morr. 2515.—Cathie v. Magistrates of Musselburgh, 30. June 1752, *ib.* 2521.—Burgesses of Irvine v. The Magistrates, Elchies, No. 31, *h. t.*—Anderson, &c. v. Magistrates of Renfrew, 30. June 1752, Mor. 2539.—Dean, &c. v. Magistrates of Irvine, July 1752, *ib.* 2522.—Magistrates of Glasgow v. M'Dowall, 18. Nov. 1768, *ib.* 2526.—Baxter v. Munro, 1772, Sup. V. 629.—Burgesses of Stirling v. the Magistrates, 29. Jan. 1774, *ib.* 419.—Wilson, &c. v. Storey, &c. 21. Feb. 1775, Mor. 2529.—Magistrates of Kilmarnock, 19. Dec. 1776, Sup. V. 406.—Cunningham v. Magistrates of Edinburgh, 3. Dec. 1800, Mor. App. No. 7, *h. t.*—Burgesses of Inverury v. The Magistrates, 14. Dec. 1820.—Jack v. Town of Stirling, 27. Jan. 1681, Mor. 2496.—Magistrates of Glasgow v. Barns, 3. March 1685, *ib.* 2515.—Jaffray v. Duke of Roxburgh, 18. Feb. 1755, *ib.* 2340.—Agnew v. Magis-

trates of Stranraer, 21. Feb. 1758, *ib.* 13074.—Magistrates of Glasgow *v.* M'Dougal, 18. Nov. 1768, *ib.* 2525.—Magistrates of Pittenweem *v.* Alexander, &c. 15. July 1774, *ib.* 2527.—Stewart *v.* Isat, 9. Aug. 1775, *ib.* 1993.—Wauchope *v.* Magistrates of Canongate, 28. Jan. 1800, App. N<sup>o</sup>. 1.—Trades of St Andrew's *v.* Magistrates, &c. 27. Feb. 1824.

#### IV. WEIGHTS AND MEASURES.

The acts relative to this branch of the subject are very numerous ; but, as those of recent date supersede the older ones, a brief notice of the latter will be sufficient.

The act 1425, *cap.* 57. fixes a standard weight.

The act 1425, *cap.* 58. establishes a water measure.

The act 1426, *cap.* 68. fixes the elne measure.

The act 1426, *cap.* 69. fixes the stone weight.

The act 1426, *cap.* 70. fixes the dry measure.

The act 1457, *cap.* 73. orders that the dry measure be equalized.

By the act 1467, *cap.* 23, the Sheriff is desired to see that all the preceding acts as to equalizing weights and measures be enforced.

The act 1491, *cap.* 33, “ of metes, measures and “ weights,” is as follows :

*Item,* It is statute and ordained, for the commoun gude of the realme, honour and profite of our Soveraine Lordis lieges, that the auld statutes and ordinances maid of befoir, baith to burgh and to land, alsweill of mettes and measures, customes and uthers, be observed and keiped, after the te-



nour and forme of the actes and statutes maid thereupon, and under the paines contained in the samin. And that the chalmerlanes provide that this be observed and keiped, and specially of weichtes, alsweil of wax and spice, and sextene ounce of the pound.

The act 1503, *cap.* 96, was passed for equalizing weights and measures.

The act 1540, *cap.* 114, “anent weights,” declares, “that no burgh have one weight to buy with, and “another to sell, different in weight therefrom : but “that all burghs have a universal weight of the stone, “both for buying and selling of all stuff in time to “come.”

The act 1587, *cap.* 114, fixes the just quantity of weights, mettes, and measures.

The act 1607, *cap.* 2, “anent weights and measures,” declares,

It is statute and ordained, that all schirefs, stewarts of royalties and regalities, provest, baillies, and aldermen of burrowes, ilk ane of them within their awne bounds and jurisdiction, put the saids acts of Parliament anent wegths, metts and measures, to due execution, betwixt the date hereof, and the first day of Januar next to come, under all heighest paine. Wherethrow that there may be ane universall conformitie of wegths, metts and measures, throughout the haill realme. With power also to the foresaids judges to take tryel of false metts, wegths and measures. And the users of the saids false wegths and measures to amit and tyne their haill goods and gear, and the samine to be intro-metted with to our Sovereigne Lord’s use.

The act 1617, *cap.* 8, § 22, orders, that the Linlithgow measure be the standard throughout Scotland.

The act 1621, *cap.* 16, “ anent mettes and measures,” ratifies the preceding statute.

The act 1621, *cap.* 17, for “ discharging of a peck to the bow,” declares,

That it shall not be lawful for any of his Majesties subjects, to blocke, or agree upon the price of victual, more or lesse, except they first agree and condescend upon the price of the first boll of the bargaine; which being so agreed upon, the said price shall rule the whole quantitie of the rest of the bolles to be received by the buyer, who shall have no eik, or addition of any further quantitie, except upon the payment of that same price as is conditioned for the said first boll: And if any person contraveen this present act, hee shall pay the summe of fourtie shillings for everie boll of victual, received by him contrarie to the tennour of this act: and that by and beside the prices of the victual, the halfe of the said summe to his Majestie and his thesaurer, and the other half thereof to the partie delator of the same.

The latest statute on the subject, is the 5. of Geo. IV. *cap.* 74, “ for ascertaining and establishing uniformity of weights and measures,” which is in the following terms:—

“ Whereas it is necessary for the security of commerce, and for the good of the community, that weights and measures should be just and uniform: And whereas, notwithstanding it is provided by the Great Charter, that there shall be but one measure and one weight throughout the realm, and by the treaty of union between England and Scotland, that the same weights and measures should be used throughout Great Britain as were then established in England, yet different weights and measures, some larger and some less, are still in use in various places throughout

“ the united kingdom of Great Britain and Ireland, and  
“ the true measure of the present standard is not verily  
“ known, which is the cause of great confusion and of ma-  
“ nifest frauds: For the remedy and prevention of these  
“ evils for the future, and to the end that certain stan-  
“ dards of weights and measures should be established  
“ throughout the united kingdom of Great Britain and Ire-  
“ land :” be it therefore enacted, That from and after the 1st  
day of May 1825, the straight line or distance between the  
centres of the two points in the gold studs in the straight  
brass rod, now in the custody of the clerk of the House of  
Commons, whereon the words and figures, “ Standard yard  
“ 1760,” are engraved, shall be, and the same is hereby de-  
clared to be the original and genuine standard of that mea-  
sure of length or lineal extension called a yard ; and that  
the same straight line or distance between the centres of the  
said two points in the said gold studs in the said brass rod,  
the brass being at the temperature of sixty-two degrees by  
Fahrenheit’s thermometer, shall be and is hereby denomi-  
nated the “ imperial standard yard,” and shall be and is  
hereby declared to be the unit or only standard measure of  
extension, wherefrom or whereby all other measures of ex-  
tension whatsoever, whether the same be lineal, superficial  
or solid, shall be derived, computed and ascertained ; and that  
all measures of length shall be taken in parts or multiples,  
or certain proportions of the said standard yard ; and that  
one-third part of the said standard yard shall be a foot, and  
the twelfth part of such foot shall be an inch ; and that the  
pole or perch in length shall contain five such yards and a  
half, the furlong two hundred and twenty such yards, and  
the mile one thousand seven hundred and sixty such yards.

II. And be it further enacted, That all superficial measure  
shall be computed and ascertained by the said standard yard,  
or by certain parts, multiples or proportions thereof ; and  
that the rood of land shall contain one thousand two hun-

dred and ten square yards, according to the said standard yard; and that the acre of land shall contain four thousand eight hundred and forty such square yards, being one hundred and sixty square perches, poles or rods.

III. “ And whereas it is expedient that the said standard yard, if lost, destroyed, defaced, or otherwise injured, should be restored of the same length, by reference to some invariable natural standard: And whereas it has been ascertained by the commissioners appointed by his Majesty to inquire into the subject of weights and measures, that the said yard hereby declared to be the imperial standard yard, when compared with a pendulum vibrating seconds of mean time in the latitude of London, in a vacuum at the level of the sea, is in the proportion of thirty-six inches to thirty-nine inches, and one thousand three hundred and ninety-three ten thousandth parts of an inch:” Be it therefore enacted and declared, That if at any time hereafter the said imperial standard yard shall be lost, or shall be in any manner destroyed, defaced or otherwise injured, it shall and may be restored by making, under the direction of the Lord High Treasurer, or the Commissioners of his Majesty’s Treasury of the united kingdom of Great Britain and Ireland, or any three of them for the time being, a new standard yard, bearing the same proportion to such pendulum as aforesaid, as the said imperial standard bears to such pendulum.

IV. And be it further enacted, That from and after the 1st day of May 1825, the standard brass weight of one pound troy weight, made in the year 1758, now in the custody of the clerk of the House of Commons, shall be, and the same is hereby declared to be the original and genuine standard measure of weight, and that such brass weight shall be, and is hereby denominated the imperial standard troy pound, and shall be, and the same is hereby declared to be the unit or only standard measure of weight, from which all other

weights shall be derived, computed and ascertained, and that one-twelfth part of the said troy pound shall be an ounce; and that one-twentieth part of such ounce shall be a pennyweight; and that one twenty-fourth part of such pennyweight shall be a grain; so that 5760 such grains shall be a troy pound, and that 7000 such grains shall be and they are hereby declared to be a pound avoirdupois, and that one-sixteenth part of the said pound avoirdupois shall be an ounce avoirdupois, and that one-sixteenth part of such ounce shall be a dram.

“ V. And whereas it is expedient, that the said standard troy pound, if lost, destroyed, defaced or otherwise injured, should be restored of the same weight, by reference to some invariable natural standard: And whereas it has been ascertained, by the Commissioners appointed by his Majesty to inquire into the subject of weights and measures, that a cubic inch of distilled water, weighed in air by brass weights, at the temperature of sixty-two degrees of Fahrenheit’s thermometer, the barometer being at thirty inches, is equal to 252 grains and 458,000th parts of a grain, of which, as aforesaid, the imperial standard troy pound contains 5760;” Be it therefore enacted, That if at any time hereafter the said imperial standard troy pound shall be lost, or shall be in any manner destroyed, defaced or otherwise injured, it shall and may be restored by making, under the directions of the Lord High Treasurer or the Commissioners of his Majesty’s Treasury of the united kingdom of Great Britain and Ireland, or any three of them for the time being, a new standard troy pound, bearing the same proportion to the weight of a cubic inch of distilled water, as the said standard pound hereby established bears to such cubic inch of water.

VI. And be it further enacted, That from and after the 1st day of May 1825, the standard measure of capacity, as well for liquids as for dry goods not measured by heaped mea-

sure, shall be the gallon, containing ten pounds avoirdupois weight of distilled water weighed in air, at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches; and that a measure shall be forthwith made of brass, of such contents as aforesaid, under the directions of the Lord High Treasurer, or the Commissioners of his Majesty's Treasury of the united kingdom, or any three or more of them for the time being; and such brass measure shall be and is hereby declared to be the imperial standard gallon, and shall be and is hereby declared to be the unit and only standard measure of capacity, from which all other measures of capacity to be used, as well for wine, beer, ale, spirits, and all sorts of liquids, as for dry goods not measured by heaped measure, shall be derived, computed and ascertained; and that all measures shall be taken in parts or multiples, or certain proportions of the said imperial standard gallon; and that the quart shall be the fourth part of such standard gallon, and the pint shall be one-eighth of such standard gallon, and that two such gallons shall be a peck, and eight such gallons shall be a bushel, and eight such bushels a quarter of corn or other dry goods, not measured by heaped measure.

VII. And be it further enacted, That the standard measure of capacity for coals, culm, lime, fish, potatoes or fruit, and all other goods and things commonly sold by heaped measure, shall be the aforesaid bushel, containing eighty pounds avoirdupois of water as aforesaid, the same being made round with a plain and even bottom, and being nineteen inches and a half from outside to outside of such standard measure as aforesaid.

VIII. And be it further enacted, That in making use of such bushel, all coals and other goods and things commonly sold by heaped measure, shall be duly heaped up in such bushel, in the form of a cone, such cone to be of the height of at least six inches, and the outside of the bushel to be the extremity of the base of such cone; and that three bushels

shall be a sack, and that twelve such sacks shall be a chaldron.

IX. Provided always, and be it enacted, That any contracts, bargains, sales and dealings made or had for or with respect to any coals, culm, lime, fish, potatoes or fruit, and all other goods and things commonly sold by heaped measure, sold, delivered, done or agreed for, or to be sold, delivered, done or agreed for by weight or measure, shall and may be either according to the said standard of weight or the said standard for heaped measure; but all contracts, bargains, sales and dealings, made or had for any other goods, wares or merchandize, or other thing done or agreed for, or to be sold, delivered, done or agreed for by weight or measure, shall be made and had according to the said standard of weight, or to the said gallon, or the parts, multiples or proportions thereof; and in using the same the measures shall not be heaped, but shall be stricken with a round stick or roller, straight and of the same diameter from end to end.

X. Provided always, and be it enacted, That nothing herein contained shall authorise the selling in Ireland, by any measures of any articles, matters or things which by any law in force in Ireland are required to be sold by weight only.

XI. And be it further enacted, That copies and models of each of the said standard yard, the said standard pound, the said standard gallon, and the said standard for heaped measure, and of such parts and multiples thereof respectively, as the Lord High Treasurer of the united kingdom of Great Britain and Ireland, or the said Commissioners of his Majesty's Treasury, or any three of them for the time being, shall judge expedient, shall within three calendar months next after the passing of this act, be carefully made and verified under the direction of the said Lord High Treasurer, or the said Commissioners of his Majesty's Treasury, or any three of them for the time being; and that the copies and

models of the said standard yard, of the said standard pound, of the said standard gallon, and of the said standard for heaped measure, and of parts and multiples thereof, so forthwith to be made and verified as aforesaid, shall, within three calendar months after the passing of this act, be deposited in the office of the Chamberlains of the Exchequer at Westminster, and that copies thereof, verified as aforesaid, shall be sent to the Lord Mayor of London, and the chief Magistrate of Edinburgh and Dublin, and of such other cities and places, and to such other places and persons in his Majesty's dominions or elsewhere, as the Lord High Treasurer or Commissioners of the Treasury may from time to time direct.

XII. And be it further enacted, That his Majesty's justices of the peace in every county, riding or division in England or Ireland, or shire or stewartry in Scotland, and the magistrates in every city, town or place, (being a county within itself,) in England or Ireland, and in every city or royal burgh in Scotland, shall, within six calendar months after the passing of this act, purchase for their respective counties, ridings or divisions, shires or stewartries, cities, towns or places, or cities or royal burghs, a model and copy of each of the aforesaid standards of length, weight, measure, and of each of the parts and multiples thereof; which models and copies, when so purchased, shall be compared and verified with the models and copies deposited with the Chamberlains of the Exchequer as aforesaid, in such manner as aforesaid, and upon payment of such fees as are at present payable to the said Chamberlains upon the comparison and verification of weights and measures with the standards thereof; and such models and copies, when so compared and verified, shall be placed for custody and inspection with such person or persons, and in such place or places, as the said justices and magistrates, in their respective counties, ridings and divisions, and shires or stewartries, cities, towns and places, or cities or royal burghs shall appoint, and the same



shall be produced by the keeper or keepers thereof, upon reasonable notice, at such time or times, and place or places within each county, riding or division, shire or stewartry, city, town or place, or city or royal burgh, as any person or persons shall by writing under his or their hand, or hands require, the person requiring such production paying the reasonable charges of the same.

XIII. And be it further enacted, That the expense of procuring and transmitting such models and copies for the respective counties, ridings or divisions, cities, towns or places, shall be paid in that part of the said united kingdom of Great Britain and Ireland called England, out of the rates payable in such counties, ridings or divisions, cities, towns or places; and in that part of the said united kingdom called Scotland, such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the Commissioners of Supply upon such shires and stewartries, and upon cities or royal burghs by the Magistrates thereof, and shall be paid along with the land-tax payable in such shires or stewartries, and cities or royal burghs, to the collectors of the land-tax in such shires or stewartries, and cities or royal burghs respectively; and in Ireland such expenses shall be paid in the respective counties, and counties of cities and counties of towns, by presentments to be made by grand juries; and the collectors of such county rates in England, of land-tax in Scotland, and of the assessments under grand jury presentments in Ireland, shall have such and the same powers of levying and recovering the assessments to be made under this act as are competent to them for levying and recovering the said county rates, land-tax and grand jury assessments respectively; and the said collectors respectively shall, out of the proceeds of such assessments, pay the expenses of procuring and transmitting such models and copies as aforesaid accordingly.

XIV. Provided always, and be it enacted, That in all cases of dispute respecting the correctness of any measure of

capacity, arising in a place where recourse cannot be conveniently had to any of the aforesaid verified copies or models of the standard measures of capacity, or parts or multiples of the same, it shall and may be lawful to and for any justice of the peace, or magistrate having jurisdiction in such place, to ascertain the content of such measure of capacity by direct reference to the weight of pure or rain water, which such measure is capable of containing; ten pounds avoirdupois weight of such water, at the temperature of sixty-two degrees of Fahrenheit's thermometer, being the standard gallon ascertained by this act, the same being in bulk equal to two hundred and seventy-seven cubic inches, and two hundred and seventy-four one thousandth parts of a cubic inch, and so in proportion for all parts or multiples of a gallon.

XV. And be it further enacted, That from and after the 1st day of May 1825, all contracts, bargains, sales, and dealings which shall be made or had within any part of the united kingdom of Great Britain and Ireland, for any work to be done, or for any goods, wares, merchandize, or other thing to be sold, delivered, done or agreed for by weight or measure, where no special agreement shall be made to the contrary, shall be deemed, taken and construed to be made and had according to the standard weights and measures ascertained by this act; and in all cases where any special agreement shall be made, with reference to any weight or measure established by local custom, the ratio or proportion which every such local weight or measure shall bear to any of the said standard weights or measures shall be expressed, declared and specified in such agreement, or otherwise such agreement shall be null and void.

“ XVI. And whereas, it is expedient that persons should  
“ be allowed to use the several weights and measures which  
“ they may have in their possession, although such weights  
“ and measures may not be in conformity with the standard  
“ weights and measures established by this act:” Be it

therefore enacted, That it shall and may be lawful for any person or persons to buy and sell goods and merchandize by any weights or measures, established either by local custom, or founded on special agreement; provided always, that in order that the ratio or proportion, which all such measures and weights shall bear to the standard weights and measures established by this act, shall be, and become a matter of common notoriety, the ratio or proportion, which all such customary measures and weights shall bear to the said standard weights and measures shall be painted or marked upon all such customary weights and measures respectively; and that nothing herein contained shall extend, or be construed to extend to permit any maker of weights or measures, or any person or persons whomsoever, to make any weight or measure at any time after the 1st day of May 1825, except in conformity with the standard weights and measures established under the provisions of this act.

(XVII. Applies to England and Ireland alone.)

XVIII. And for the purpose of ascertaining and fixing the payments to be made of all stipends, feu-duties, rents, tolls, customs, casualties, and other demands whatsoever, payable in grain, malt, or meal, or any other commodity or thing in that part of the united kingdom called Scotland, or in any place or district of the same; be it enacted, That the sheriff-depute, or sheriff-substitute in each shire, and the stewart-depute, or stewart-substitute in each stewartry, within Scotland, shall, as soon as conveniently may be after the expiration of six calendar months from and after the passing of this act, summon and impanel a jury of the same number, and with the same qualifications which are required in the jury who strike the fiar prices of grain within the same shire or stewartry, to assemble at such place or places as he shall find convenient; which jury shall inquire into, and ascertain the amount, according to the standards by this act established, of all such stipends, feu-duties, rents, tolls, customs, casualties, and other demands whatso-

ever, payable in grain, malt, meal, or any other commodity or thing, according to the weights and measures hitherto in use within the same shires or stewartries; and such inquisitions, when taken, shall be transmitted by the respective sheriff-clerks or stewart-clerks of such shires or stewartries, into his Majesty's Court of Exchequer at Edinburgh, and shall there be enrolled of record, and shall and may be given in evidence in any action or suit at law, or in equity; and the amount so to be ascertained shall, when converted into the standard weights and measures, be the rule of payment in regard to all such stipends, feu-duties, rents, tolls, customs, casualties, and other demands whatsoever, in all time coming; and the costs and charges of such inquisitions, and the enrolment thereof, shall be assessed and levied, paid and defrayed by every such shire or stewartry, in manner as is herein before directed, in regard to the assessment for the models of the weights and measures to be purchased for the same shire or stewartry.

XIX. And be it further enacted, That as soon as conveniently may be after such inquisitions shall have been made and enrolled in England, Ireland, and Scotland, respectively, accurate tables shall be prepared and published under the authority of the said Commissioners of his Majesty's Treasury, showing the proportions between the weights and measures heretofore in use, as mentioned in such inquisitions, and the weights and measures hereby established, with such other conversions of weights or measures as the said Commissioners of his Majesty's Treasury may deem to be necessary; and after the publication of such tables, all future payments to be made shall be regulated according to such tables.

“ XX. And whereas, the weights and measures by which  
“ the rates and duties of the customs and excise, and other  
“ his Majesty's revenue, have been heretofore collected, are  
“ different from the weights and measures of the same deno-

“ minations directed by this act to be universally used: And  
“ whereas the alteration of such weights and measures may,  
“ without due care had therein, greatly affect his Majesty’s re-  
“ venue, and tend to the diminishing of the same :” For the  
prevention thereof, be it therefore enacted, That so soon as  
conveniently may be after the passing of this act, accurate  
tables shall be prepared and published under the direction  
of the said Commissioners of the Treasury for the time being,  
in order that the several rates and duties of custom and ex-  
cise, and other his Majesty’s revenue may be adjusted and  
made payable according to the respective quantities of the le-  
gal standards directed by this act to be universally used ; and  
that from and after the said 1st day of May 1825, and the  
publication of such tables, the several rates and duties there-  
after to be collected by any of the officers of his Majesty’s  
customs or excise, or other his Majesty’s revenue, shall be  
collected and taken according to the calculations in the ta-  
bles to be prepared as aforesaid.

The time for the commencement of the operation of  
this statute is declared to be 1st January 1826.—See  
statute 6. Geo. IV. *cap.* 12.

#### V. TAXATION, WATCHING, AND WARDING.

The object which the statutes on this subject have  
chiefly in view is, to secure a contribution towards the  
income of the clergy and the support of the poor. They  
also authorise and direct the magistrates to levy from  
all the inhabitants, in proportion to their property in  
burgh, such taxes as are necessary for the expenditure  
of the burgh.

The act 1587, *cap.* 111. states, that in consequence of

the annexation of church lands to the crown, it became necessary that some new provision should be made for the clergy, and that part of such provision should be charged on the burghs. It therefore declares, " that  
" the taxation of free burghs shall noways be altered,  
" but shall stand as the same stood in all time prece-  
" ding ; that is to say, their part of all general taxa-  
" tions in time coming shall extend to the sixth part  
" thereof allenarly."

The act 1592, *cap.* 153, " anent the taxation of  
" burghs, watching and warding," is in these terms :

*Item*, Seeing the taxation and stentes upon the realme is multiplied, quherewith the burrowes are verie greatlie burdened : Therefore it is statute and ordained, that all maner of persons, inhabitantes of burrowes, exerceand onie maner of trafficque, merchandise, or having change within the same, sall beare their part of all taxes, stentes, and taxationes, watching, and warding, in all duties and services pertaining to our Sovereine Lord, the weill of the realme, and the utilitie of the burgh ; and that without onie respect to be had to onie privedge, discharge, or exceptiones, granted be our Sovereine Lordis predecessoures, or be his Hienes self, or to be granted in times cumming be his Majestie, or his successors, to quhatsumever person or persones, of quhatsumever qualitie, or for quhatsumever cause. And ordainis this to have execution against all persons exerceand the trafficque of merchandise, or uther change, in onie of the burrowes of this realme, whidder they be admitted free burgesses therein or not : Providing alwayes, that it sall be leasum to his Hienes, notwithstanding of the said act, to exeeme from the saides taxationes, watching and warding, ane person of ilk craft, for his Hienes particular use and service, in case his Majestie finde it gude and expedient to be done. And siklike, that this act be not prejudiciall to the members of the colledge of justice, and to their privedges and immunities

granted unto them, or whereof they have bene in use in times bygane.

This statute, with “all clauses and conditions therein contained,” was confirmed by the subsequent act of 1594, *cap.* 225 : “With this addition, that the same shall be extended to all merchants or craftsmen, as well free as unfree, that has no other dwelling-place but within burgh, and has their commodity within the same burgh, and bears no burden of taxation without the same burgh.” The former of these acts was held to be in disuse.—See the case of Paterson, &c. v. Just, &c. 6. Dec. 1810.

The act 1597, *cap.* 275, obliges the inhabitants of burghs to contribute towards “the entertainment of the poor.” It declares,

That all sik as hes their residence and dwelling within the saidis burrowes, be their families, and may spend ane hundreth poundes of zeirly rent wjthin the same, or stented be the descreit nichtboures, to be worth twa thousand markes in free guddes, sall be subject to be burdened with the rest of the inhabitantes, for the advancement of the glorie of God, his Majesties service, and weill of the burgh quhair they dwell: Providing alwaies that this act be nawaies extended to sik as ar exeemed for his Majesties service, as ane of ilk occupation for that cause: neither to ony persons that ar members of the College of Justice, and admitted be the Lordes of the Session.

And, lastly, the act 1597, *cap.* 276, which announces in its title the purpose of the enactment, viz. that “all burgesses should be taxed and stented by their magistrates according to their rents within burgh,” declares,

That in all time cuming, it sall not be leasum to the provest and baillies of burghes, nor na stenters within the same, to stente ony persones therein, according to their livinges and rentes lyand out-with burgh: bot only according to their rents and halding within burgh, as they do with vther persones, of their rancke and substance, that hes na rente nor living out-with burgh, and na utherwayes.

According to Mr Erskine, B. I. 4. 22. the above act 1592, *cap.* 153, gives power to magistrates to “impose taxations for the utility of the burgh by their own authority: Provided, that not only the consent of the magistrates and council, but of the special incorporations burdened, be adhibited to their act.”

#### DECISIONS—TAXATION, &c.

Boswell v. Kirkaldy, 1. Feb. 1669, Mor. 1895, & 10891.—Forbes v. Town of Inverness, 14. Feb. 1672, *ib.* and Sup. II. 700.—Town of Aberdeen, Jan. 1678, Sup. III. 218.—Baillie of Bo’ness, 19. Jan. 1694, Fountainhall.—Town of Glasgow v. The Writers, 13. Dec. 1695, Mor. 1897.—Town of Edinburgh v. Biggar, 24. Nov. 1698.—Inhabitants of Calton v. Canongate, 7. June 1745, *ib.* 1899.—Wilson v. Magistrates of Glasgow, 15. June 1759, *ib.* 1900.—Magistrates of Glasgow v. Dawson and Mitchell, 22. May 1826, Wilson and Shaw, I. 250.

#### VI. ROADS.

The inhabitants of burghs are protected in the unmolested accommodation of roads or streets by two statutes. The act 1555, *cap.* 53, “anent the common passage in burghs,” declares,



That all commoun hiegates, that free burrowes hes bene in use of preceedant, outhir for passage fra their burgh, or cumming thereto, and in speciall, all commoun hiegates, fra drie burrowes, to the portes and havens nixt adjacent, or proceedant to them, be observed and keiped, and that nane make them impediment, or stop thereintill: And gif onie dois, to be called and accused for oppression, and punished therefore, according to the lawes.

And the act 1592, *cap.* 156, confirms the prior statute, with the following additions :

That for-sameikle as it is sufficientlie understand be his Majestie, that diverse malicious persons, upon deliberat malice, stoppis and impedis publick passages, pertaining to free burrowes, within this realme, namlie, to the portes, quhilkis hes greatest occasion of trafficque, be casting of fowsies, and bigging of dikes, for inter-closing of the saidis common passages, and will not suffer the inhabitantes of the saidis burrowes, and uthers of his Hienes lieges, and trafficquers towards the saidis sea-portes, to have, or frequent the accustomed passage used of before, in transporting of victualles, fewalles, vivers, merchandise, and uthers, for entertainment of the common negotiation of the cuntrie, bot compellis them to pas ane mile or twa about, to the great hurt and prejudice of the saidis lieges: Heirfore his Majestie, with advise foresaid, in corroboration of the said former act, and to the effect that the samin may be put to full execution in time cumming, statutis and ordainis that nane presume, or take upon hand hereafter, to stop, or impede the saidis publick and common passages pertaining to the saidis free burrowes, and namelie to the saidis sea-portes: And gif onie sall happen to doe in the contrarie, the parties grieved sall have their recourse to the Lordes of Councell and Session, quha sall grant summar letters in their favoures, upon sex daies warning allanerlie, to cause and compell the commiters of the said oppression, to desist and cease therefra; and

to heare and see themselves decerned to have done wrang in stopping of the saids passages ; and to finde caution, acted in the saidis Lords buikes, under sik paines as sall bee modified unto them, never to commit the like wrang be themselves, their men, tennents, or servandes, and uthers quhom they may let ; the ane half of the said penaltie to appertaine to his Hienes, and the uther half to the partie grieved ; and the probation of the said wrang, in stopping of the saidis passages, to be received by famous witnesses allanerlie, and not by ane assise : And the tryall thereof to appertaine to the saidis Lordis of Councill, and all utheris inferiour judges to be discharged fra proceeding in the saids cause, notwithstanding ony quhat-sum-ever statute or constitution, made anent molestationes, in propertie or commontie ; in number quhair of his Hienesse will nawaies that the saidis oppressiones and staying of publicke passages sall be comprehended ; and ordainis publication to be made hereof, in forme as effeiris.

Miller v. Swinton, 3. Nov. 1740, Dict. p. 13527.

#### VII. TRADE AND EXCLUSIVE PRIVILEGE.

The privileges of royal burghs in regard to trade are of two kinds,—a right to import foreign merchandise, and a right to exercise any craft or trade within burgh.

To regulate merchandise, a great many statutes have been passed. Parliament seem at first to have discouraged a retail trade, and to have restricted traffic to wholesale dealings. This is the import of all the earlier acts on the subject, as 1503, *cap.* 84,—1555, *cap.* 59, and several others passed in the fifteenth and sixteenth centuries.

But this system has been completely overturned by more recent statutes. The act 1672, *cap.* 5, declares,

That it is, and shall be the priviledge of free-men of royal burrows, and no other incorporation or person within this kingdom, to buy or sell, in great or whole sale, wine, wax, silks, spiceries, wald, and other materials for dying; and that no other incorporation or person within this kingdom shall have power to import or export the same, or to import any other commodities, except such as are allowed to them by this present act: but prejudice to noble-men, prelates, barones and others, of their priviledge of importing any of the saids goods, for the proper use of themselves and their families allanerly. Likeas, his Majesty, with consent foresaid, doth hereby enact and declare, That it shall be leisom to any of his Majesties good subjects, or any person that shall buy from them, to export forth of this kingdom, by sea or land, all manner of corns that are of the growth of the kingdom, all manner of cattel, nolt, sheep, horse, coal, salt, and wool, skins, hydes, and all other native commodities of the kingdom: And that it shall be leisom to the burghs of regality and barony, by any of their burgesses or members of society, to export all their own proper manufacturie, or such goods as shall be bought by them in fairs or markets; and that it shall be leisom to the saids burghs of regality or barony, or societies erected or to be erected for manufacturies, and all others exporting the native growth of the kingdom as aforesaid, to import, in return of the saids goods exported, or of the fraught and hire of the ships, the goods and commodities following, viz. Timber, iron, tar, soap, lint, lintseed, hemp, onions, or other necessars, for tillage or building, or for the use of their foresaid manufacturie; and als, to top and retail all commodities whatsoever. Likeas, his Majesty, with consent of the said Estates, statutes and ordains, That, if any man, not being free-man in the royal burrows, shall be found to have in his possession any goods or commodities to be bought or sold, exported or imported by him, contrair to this present statute, and the priviledge of the

royal burrows granted thereby, the saids whole goods shall be escheat, the one half to his Majesty, and the other half to the burgh apprehender; and that, if the saids goods be apprehended within any of the saids royal burrows, or the suburbs or appendices belonging to them, or within their ports or harbors, the samin may be summarly seised and secured, as goods escheat in manner foresaid; but if the saids goods, competent only to freemen of royal burrows, shall be found or alleadged to be found elsewhere: they shall only be arreasted and pursued to be declared escheat, to be divided in manner above-written, before any competent judicator, as accords of the law; and that, upon pretence thereof, the magistrates of burghs, or others by commission from them, or any of their inhabitants, shall not search or seise upon any goods, or any way trouble or molest his Majesties good subjects, living without the bounds of their saids burghs or suburbs, summarly and by way of fact, but only by legal process according to law, upon the pretence of any privileged, custom or usage whatsoever, unless the persons be deprehended in the present and actual transgression of the privileges of the royal burrows above-written, and that within the bounds of the saids burghs, suburbs and ports thereof; under the pain of being proceeded against as committers of ryot, and disturbers of his Majesties peace: Likeas, his Majesty, with consent foresaid, cassis, annuls and rescinds all acts of Parliaments and ratifications, in swa far as they are contrair to this present statute; and ordains letters of horning to be direct summarly at the instance of all royal burrows, against all and whatsoever persons who have transgressed, or shall transgresse the foresaid privileges, as the same are established and declared by this present act.

The statute 1690, *cap.* 12, is still more explicit in its phraseology. It sets forth in the preamble, as a principle of expediency, that all controversies about

“ trade should be clearly determined,” and therefore ordains,

That the importing of all foreign commodities and merchandise, either by sea or land, doth, and shall belong to the freemen inhabitants of their Majesties royal burrows allenarly, excepting cattel, horses, sheep, and other bestial; and likewise excepting such commodities as noblemen and barons shall import for their own use, and whereof no part shall be imported for sale: And likewise, they statute and ordain, That the exporting by sea of all the native commodities of this kingdom doth and shall belong to the freemen inhabitants of the royal burrows only, excepting corns, cattel, horses, sheep, mettals, minerals, coals, salt, lime and stone; but prejudice to noblemen and barons to export as much of the other native product of the kingdom, whether staple commodities or others, as may answer to the value of the commodities, which shall be imported by them for their own use, as said is: As also, but prejudice to all the lieges, to transport by land out of this kingdom all the native commodities thereof; and in case any person shall do in the contrar of this present act, they shall be punished according to the tenor of the acts of Parliament made against unfree traders, in all points: Declaring hereby, that the inhabitants of burghs of regalities and baronies and others, shall, and may trade in buying and selling all native commodities; and likewise may retail all foreign commodities, providing they buy these foreign commodities from some of the freemen of the royal burrows, bearing scot and lot therein, and no otherwise.

The act 1698, *cap.* 19, entitled, an “ act regulating “ the trade betwixt burghs royal and burghs of regality, “ barony and others,” declares,

That in time coming, the exporting of the native goods from this kingdom, and the importing of foreign goods into

the kingdom, is the privilege of the freemen and burgesses of burghs royal, and of such to whom the said privilege shall be communicate, exclusive of all others, excepting the exportation of corns, cattel, horse, nolt, sheep, coal, salt, metals and minerals, lime and stone, and but prejudice to noblemen and barons, to export the native products growing or manufactured in their lands, and to import foreign commodities for their own use, and not for sale answering to the value of such export, excepting also the privileges granted by law to declared manufactories, and societies for fishing. And further, it is declared, That in time coming, the inhabitants of burghs of regality and barony, and others, may trade, buy and sell all native commodities, as also retail foreign commodities, providing they buy these foreign commodities from some of the freemen of the burghs royal, or of such burghs who shall get the foresaid communication, and who pay scot and lot within burgh, and no otherwise; and the grant of these privileges in favours of the royal burroughs shall have execution in the way and manner prescribed by the 12th act, 2d sess. of this current Parliament, *anno* 1690, in favours of royal burroughs.

And the act 1698, *cap.* 20, appoints commissioners to determine the disputes between the royal burghs and burghs of regality and barony, especially in regard to the subdivision of the £. 10 of the £. 100 of the tax-roll of the burghs royal, declared by the act 1693, *cap.* 30, (commonly called the Buchan Stent,) to be the proportion to be undertaken by the burghs of regality and barony during the subsistence of Mr Buchan's contract. A detail of the proceedings of these commissioners is given in the Appendix to Volume X. of the Scottish acts of Parliament, published by Mr Thomas Thomson.

The incorporated trades derive their privileges, either from the crown, by special charters, from the magistrates, by seals of cause, or from immemorial and uninterrupted usage, especially if they be represented in council by a deacon.

The act 1424, *cap.* 39, directs, that “ilk craft should have a deacon.”

This appointment or choice of a deacon seems afterwards to have been suspended, or taken away by subsequent statutes; but, by a general charter of King James VI. in 1581, the trades are to have deacons, notwithstanding the act 1555, *cap.* 52. These deacons are sometimes chosen by the magistrates, from a leet presented to them by the incorporations; but more frequently by the incorporations themselves.

The act 1457, *cap.* 67, declares, That “the sellers in merchandize be freemen of burghs, indwellers with in burgh.”

The act 1487, *cap.* 107, is as follows :

*Item*, It is statute and ordained, that the acte of Parliament, touching the craftes-men usand and dealand with merchandice, micht be put to execution, sa that he that is a craftes-man, outhier for-beare his merchandice, or else renunce his craft, but ony dissimulation or cullour, under the paine of escheit of the merchandice, that he usis occupyand his craft, and this escheit to be in-brocht be the said searchoures to our Soveraine Lordis use, and compt thereof to be maid in the checker.

The act 1592, *cap.* 152, bearing, That “it is not leisom to unfreemen, but to burgesses, to exerce the traffic of merchandize, declares,

*Item,* For-sameikle as by diverse lawes and acts of Parliament, it is statute and ordained that na person within this realme suld exerce the trafficque of merchandice, bot the burgesses of free burrowes; quhilkis have not bene, nor zit ar observed, be reason that there is na penaltie irrogat to the persones, contraveeners thereof: therefore our Sovereine Lord, and haill Estaites of this present Parliament, confirmis, ratifies and apprievis the saidis actes, constitutiones, and everie ane of them, with this addition, that quha-so-ever exercisis the said trafficque of merchandise, not being free burgesses, their haill guddes and geare sall becum in escheitte, the ane halfe to our Sovereine Lord, and the uther halfe to the burgh, quhais commissioner or collectour sall first apprehend the same. And to the effect that the saidis escheittes may be up-lifted, his Majestie and Estaites foresaidis gives and grauntis full power and autoritie to everie ane of the saidis free burrowes, be themselves or their commissioner or collectour, quhom they sall have power to depute in that behalfe, to search and seeke the guddes and geare of the saidis un-freemen trafficquers, to intromet therewith as escheit: and to deliver ane half thereof to his Hienes thesaurer, and the uther halfe to the burgh, quhair of he sall be appoynted commissioner or collectour, quhidder it be within this realme, or in ony uther part, quhair the same may be challenged: and to arreist the saidis guddes, call, follow and persew therefore, before un-suspected baillies or deputies, quhom they sall have power to creat to that effect: and ordainis the ane halfe of the said escheit to be intromitted with be the said commissioner or collectour, as said is, to be applyed to the commoun weill of the said burgh, quha sall first apprehend the saidis escheitte guddes; of the quhilk halfe of the saidis escheit guddes, there sall be zeirlie compt maid, as is appoynted of the commoun gudde of the burgh: Providing always that this present act be not prejudiciall to noble-men, barronnes, or uther landed men; to



bring, or cause bring, or have merchandise to their awin particular use and behoove, swa that they sell not the same, or make merchandise thereof againe, to our Sovereaine Lordis lieges; quherein, in case the said noble-men, barronnes, and utheris abone written, be fund or apprehended culpable, they sall be reputed, halden, and esteemed, as un-freemen trafficquers: and it sall be leasum to the saidis free burrowes, or their commissioner and collectour foresaid, to intromet with their haill guddes and geare, as escheitt, and dispone upon the same, as with the saidis unfreemen's guddes, in maner abone written.

And by 1592, *cap.* 154, the "exercise of crafts with-  
" in suburbs adjacent to burghs is forbidden." It declares,

That in all time cumming, there sall be na exercise of craftes in the suburbes adjacent to the saidis burrowes, bot that the samin sall cease in all times hereafter; and that it sall be leasum to the provest and baillies of the saidis burrowes, and their deputes and officiares, to intromet with all the warkes that sall be found wroucht, or in working; quhider the materialles thereof apperteine to the craftesman himselfe, or to quhatsumever person, and to escheit the samin, to be applyed to the commoun warkes of the burgh nixt adjacent to the saids suburbes.

The act 1607, *cap.* 4, "anent craftsmen," declares,

Our Sovereigne Lord, and Estaites of this Parliament, ratifies, approves and confirms the act of Parliament made by King James the Fifth of worthie memorie, intituled, Act anent the conduction of craftsmen, whilk is the hundreth and elleventh act, in the haill poynts, articles and clauses thereof; and ordeins the samin to have effect, and be put to execution in tyme comming after the tennour thereof, not-

withstanding whatsoever act or statute made in the contrare thereof sensyne.

The act 1607, *cap.* 6, “ against unfreemen,” is as follows :

Our Sovereigne Lord, and Estaites of this present Parliament, ratifies, approves and confirms all acts, lawes, decreits and priviledges granted or given in favours of his Heighnes free royall burrowes : And considering the great hurt and skaith, daily sustained by the burgesses inhabitants of his Majesties royall burrowes, wha underlyes and beares all burdings imposed upon the estaite of burrowes, in all his Majesties services, throw the continuall enteresse of unfree traffickers, dwelling in divers parts of this realme, not being burgesses of the saids royall burrowes, and neverthelesse keepes and holds open buiths, buyes and selles marchandice, and otherwyse uses the liberties and priviledges of free burgesses, as if they were burgesses and actuall residents within the saids royall burrowes, in manifest defraud of our Sovereigne Lords customes, and to the prejudice of the liberties of the saids free royall burrowes : And therefore statutes and ordeins, that all unfree persons not being actuall burgesses of the saids free royall burrowes, wha beares not burding and payes not taxt and stent to his Majestie, shall desist and cease from using of any trade of marchandice, or of the liberties and priviledges foresaids of the saids free royall burrowes, under the paines contained in the acts of Parliament made anent unfree traffickers of before ; and that letters of horning be direct hereupon, charging whatsoever unfreemen, and usurpers of the priviledge of the saids burrowes, to finde sufficient caution for obedience of this act : And als that letters of horning be direct upon all acts and decreits of burrowes, given at their conventions betwix burgh and burgh, and burgesses of free burrowes, upon ane simple charge of ten dayes without calling of the partie.

The act 1661, *cap.* 47, inhibits and discharges “ all  
“ tradesmen and mechanics to import from foreign parts  
“ any made work belonging to that trade or calling  
“ whereof they are freemen, or to vend the same, or  
“ any such ware brought home by merchants, in their  
“ shops or otherways, under the pain of confiscation,  
“ the one-half to his Majesty’s use, and the other to the  
“ apprehender or pursuer of the same.”

The 12th of Queen Anne, *cap.* 12, was passed to  
“ enable such officers and soldiers as have been in her  
“ Majesty’s service during the late war to exercise  
“ trades.”

And the act 56th of Geo. III. *cap.* 67, was passed  
with a similar object of enabling “ such officers, marines,  
“ and soldiers, as have been in the land or sea service,  
“ or in the marines, or in the militia, or any corps of  
“ fencible men, since the 42d of Geo. III. (June 1802,)  
“ to exercise trades.” It is in the following terms :

“ Whereas, there have been, and are divers officers, ma-  
“ riners, soldiers and marines, who have served his Majesty  
“ in the late wars by sea and land, some of whom are men  
“ that used trades, others that were apprentices to trades  
“ who have not served out their times, and others who, by  
“ their own industry, have made themselves apt and fit for  
“ trades; many of whom, the wars being now ended, would  
“ willingly employ themselves in those trades which they were  
“ formerly accustomed to, or which they are apt or able to fol-  
“ low and make use of for getting their living by their own la-  
“ bour, but are or may be hindered from exercising those  
“ trades in certain cities and corporations, and other places  
“ within this kingdom, because of certain bye-laws and cus-  
“ toms of those places;” for remedy whereof, be it enacted,

That all such officers, mariners, soldiers and marines, as have been at any time employed in the service of his Majesty, since the 22d day of June 1802, and have not since deserted the said service, and also the wives and children of such officers, mariners, soldiers and marines, may set up and exercise such trades as they are apt and able for in any city, town, or place within this kingdom, without any let, suit or molestation of any person or persons whatsoever, for or by reason of the using of such trade; nor shall such officers, mariners, soldiers or marines, or their wives or children, during the time they shall exercise such trades, be removeable from such respective place or places, to his, her or their last legal place of settlement, by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or any child of any such officer, mariner, soldier or marine, shall be sued, impleaded or indicted in any court whatsoever within this kingdom, for using or exercising any such trades as aforesaid, then the said officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of any such officer, mariner, soldier or marine, making it appear to the same court, where they are so sued, impleaded or indicted, that they have served his Majesty as aforesaid, or that he, she, or they, is or are the wife or wives, child or children of such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, who shall have so served his Majesty, shall, upon the general issue pleaded, be found not guilty in any plaint, bill, information, or indictment exhibited against them, and such person or persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information or indictment, and shall have a verdict passed against him or them, or become nonsuit therein, or discontinue his or their said

suit, shall pay unto such officer or officers, mariner or mariners, soldier or soldiers, marine or marines, or the wife or child of such officer, mariner, soldier or marine respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and jurors before whom any such suit, information, or indictment shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto; any statute, law, ordinance, custom, or provision to the contrary in anywise notwithstanding.

II. And be it further enacted, That it shall and may be lawful for any two or more Justices of the Peace for the county, city, town, or place where any such officer, mariner, soldier, or marine, shall set up and exercise any trade as aforesaid, to cause such mariner, soldier or marine, to be summoned before them in the city, town or place where such officer, mariner, soldier, or marine, shall set up and exercise such trade as aforesaid, in order to make oath of the place of his last legal settlement, which oath the said justices are hereby empowered to administer, and such officer, mariner, soldier, or marine, is hereby directed to obey such summons, and to make oath accordingly; and such justices are hereby required to give an attested copy of such affidavit so made before them to the person making the same, in order that he may produce it when required; which attested copy shall at any time be admitted as evidence as to such last legal settlement before any of his Majesty's Justices of the Peace at any general or quarter sessions of the peace: Provided always, that in case any such officer, mariner, soldier, or marine, shall be again summoned to make oath as aforesaid; then on such attested copy of the oath by him formerly taken being produced by him, or by any other person on his behalf, such officer, mariner, soldier, or marine, shall not be obliged to take any other or further oath with regard to his legal settle-

ment, but shall leave a copy of such attested copy of his examination, if required.

III. And be it further enacted, That this act, and every part thereof, shall extend to all officers and soldiers who have personally served in the militia, or any of the fencible regiments, from the said 22d day of June 1802, for the term of five years, and have been honourably discharged.

IV. Provided always, that this act shall not be in anywise prejudicial to the privileges of the universities of Cambridge and Oxford, or either of them, or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said universities, without licence first had and obtained from the vice-chancellor of the same respectively.

DECISIONS—TRADE, &c.

Kell and others *v.* Stentmasters of Saltcoats, 27. May 1794, F. C.—Skirving *v.* Smellie, 19. Jan. 1803, F. C.—Wrights of Glasgow, 8. March 1765, *ib.*—Crooks, &c. *v.* Turnbull, 4. Dec. 1776, F. C.—Fotheringham *v.* Langlands, 13. Dec. 1776, *ib.*

Weavers of Stirling, 21. March 1628, Mor. p. 1903.—Town of Linlithgow *v.* Inhabitants of Bo'ness, 30. Jan. 1663, *ib.* 1904, and Sup. II. 299.—Town of Cupar, 24. June 1664, *ib.* 1905.—Davidson *v.* Town of Inverness, 14. June 1667, *ib.* 1983.—Town of Perth, 21. July and 4. Dec. 1669, *ib.* 1905.—Deacons of Stirling, 5. July 1671, *ib.* 1907.—Town of Glasgow *v.* Shaw, 20. Dec. 1678, *ib.* 1908, and Sup. III. 113 & 269.—Trades of Canongate *v.* Earl of Roxburgh, 22. Feb. 1694, *ib.* Sup. IV. 159.—Buchanan *v.* Mary's Chapel, 10. Jan. 1695, *ib.* Sup. IV. 239.—Buchan *v.* Towns of Musselburgh and Dalkeith, 12. Feb. 1696, *ib.* 310.—Tweeddale and Pirie *v.* Litsters of Edinburgh, 4. Feb. 1696, *ib.* 304.—Guildry of Stirling *v.* The Trades, 8. Jan.

1697, Dict. p. 1916.—Brown v. Town of Edinburgh, 20. Feb. 1707, Sup. IV. 656.—Tailors of Edinburgh v. Tailors of Canongate, 26. June 1707, and 16. June 1708, Dict. 1917, & Sup. V. 47.—Magistrates of Edinburgh v. Country Brewers, 17. July 1711, *ib.* 74.—Dean of Guild of Aberdeen v. Burnet, 21. Dec. 1711, Dict. 1919.—Girdle-smiths of Culross v. Watson, 13. Jan. 1725, *ib.* 1924.—Inhabitants of Maryburgh, &c. v. Governor of Fort William, 31. Jan. 1736, Elchies, No. 5.—Merchant Company of Edinburgh v. Roo, 26. Jan. 1737, *ib.* No. 8.—Barbers of Edinburgh v. M'Duff, 1. Dec. 1738, Dict. 1925.—Hog v. Flockhart, &c. 26. Jan. 1743, *ib.* 1926.—Guildry of Dunfermline v. The Trades, 24. Nov. 1743, Elchies, No. 5. *voce Privilege*.—Corporation of Mary's Chapel v. Kellie, 14. Jan. 1747, Dict. 1931.—Magistrates of Kirkwall, 30. June 1747, Elchies, No. 25. *h. t.*—Maltmen of Glasgow v. Tenant, 10. Feb. 1749, Dict. 1934.—Coopers of Perth v. Davidson, &c. 8. July 1752, *ib.* 1938.—Burgh of Kirkwall, 16. July 1755, *ib.* 1943, affirmed on appeal.—Cordiners of Glasgow v. Dunlop, &c. 3. Dec. 1756, *ib.* 1948.—Tailors of Perth v. Lyon, 10. Dec. 1756, *ib.* 1947.—Hammermen of Glasgow v. Dunlop, &c. 19. Feb. 1757, *ib.* 1950.—Smith v. Guildry of Inverness, Dec. 1757, *ib.* 1952.—Barbers of Edinburgh v. Barbers of Canongate, 2. Dec. 1760, *ib.* 1954.—Whyte v. Taylors of Glasgow, 23. Nov. 1762, *ib.* 1959.—Wrights of Glasgow v. Cross, 8. March 1765, *ib.* 1961.—Goodfellow v. Hammermen of Stirling, 4. July 1766, *ib.* 1963.—Shoemakers of Edinburgh v. Murray, 4. July 1766, *ib.* 1962.—Coppersmiths of Edinburgh v. Aberdour, 6. Aug. 1768, *ib.* 1966.—Wrights of Haddington v. Begbie, 1771, *ib.* *ib.*—Scot, &c. v. Dickieson, &c. 3. Dec. 1772, *ib.* 1967.—Freeland, &c. v. Weavers of Glasgow, 29. Jan. 1778, *ib.* 1975.—Bakers of Edinburgh v. Dowie, 4. Dec. 1783, *ib.* 1976.—Reid v.

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 ham, &c. 2. March 1802, *ib.* No. 10.—Marshall v. Lamont,  
 8. March 1803, *ib.* No. 14.—Weavers of Lanark v. Por-  
 teous, &c. 6. March 1804, *ib.* No. 16.—Hammermen of  
 Canongate v. Carfrae, 11. Dec. 1807, *ib.* No. 18.—Craig,  
 &c. v. Forrester, 26. Jan. 1808, *ib.* No. 19.—Bakers of  
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 ilege.*"—Bakers of Perth v. Gloag, &c. 5. July 1808, *ib.*  
 No. 22. *h. t.*—Wrights of Glasgow v. Dunn, 24. Feb. 1809,  
 F. C.—Sprott v. Scott and others, 6. Dec. 1810, affirmed,  
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 7. June 1740, Elchies, No. 2. v. "*Community.*"—Muir-  
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 lie, &c. 19. Jan. 1803, *ib.* 10921.—Mowat v. Tailors of  
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## SOLDIER'S PRIVILEGE.

Tailors of Glasgow, v. M'Kechny, 25. March 1777, Mor.  
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*ib.*—Muir, &c. v. M'Bean, &c. 19. Feb. 1793, 2004.—  
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of Haddington v. Begbie, 15. Jan. 1796, *ib.* 2017.—Fleshers of Dundee v. Woodcock, 24. Feb. 1808, App. No. 20 *h. t.*—Kirkwood v. Tailors of Canongate, 19. Jan. 1811.—Corporation of Mary's Chapel v. M'Cormick, 30. Jan. 1814.—M'Ewan and Fergusson v. Davidson, 27. June 1816.—Fleshers of Haddington v. Sandie, 26. Jan. 1819.—Coopers of Glasgow v. Grant, 23. Feb. 1822.—Moodie v. Gibson, 17. Dec. 1822.

#### VIII. PRISONS.

Prisons or jails in Scotland serve two purposes :—they are a place of confinement and security for criminals, either previous to trial, or *in modum pœnæ*, and they are also a receptacle for insolvent debtors. The first enactment requiring prisons to be erected in every burgh, was the act 1597, *cap.* 273, which ordains,

That there be sufficient and sure jailles and warde-houses bigged, up-halden and maintained be the provest, baillies, councell, and communities of the saidis burrowes, upon their awin commoun gude, or otherwayes upon the charges of the burgh ; and that for sure imprisoning, warding, keiping and deteining of all sik persones, transgressoures of his Hienesse lawes, upon their awin expenses, alsweill criminall as civil, as sall be presented unto them, be the schireffe of the schire, or stewards and baillies of regalities, within the quhilk the saids burghes ar situate, and speciallie quhair their judicatorie sittis ; and alsua all uthers persones presented ather to warde, be vertew of their awin autoritie within burghes, or utherwayes, upon letters of caption directed to them.

By 1617, *cap.* 8. § 15, (being an act for the direction of those in the commission of the peace,) it is de-

clared, that “ the saids commissioners shall take notice, “ in all sheriffdoms where there are any jails and prison- “ houses within any burgh, that the same may be kept “ up and not suffered to decay or become ruinous ; and “ if there be any shire where there is not any jail or “ prison-house, they shall inform his Majesty’s council “ thereof, that they may appoint and give order for “ building of one within the head burgh of the shire ; “ and according to the direction to be given thereanent, “ the justice shall be holden to proceed.”

Section 17. of the same statute declares, that “ all “ magistrates of burghs, and keepers of any jails or “ prisons, shall receive into their prisons all such per- “ sons as either shall be brought by constables, or sent “ unto them by warrants under the hand of any one “ justice of the peace, (the saids justices causing satisfy “ for their entertainment ;) and if any magistrates or “ their jailors suffer any persons, committed by the jus- “ tices to their prisons, to escape, they shall be conding- “ ly punished therefor at the discretion of his Majes- “ ty’s council.”

These provisions are repeated, in the same words, in the subsequent statute 1661, *cap.* 38.

The act 21. of Geo. II. *cap.* 19. § 9, declares all forts erected or to be erected by the King, in the shires of Dumbarton, Stirling, Perth, Kincardine, Aberdeen, Inverness, Nairn, Cromarty, Argyle, Forfar, Banff, Sutherland, Caithness, Elgin, Ross, and the stewartry of Orkney, to be lawful prisons ; and the commanding officers in such forts are required to obey all legal or-

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ders and warrants directed to them for the receiving, detaining or releasing prisoners committed to them by the civil magistrates.

And the act 16. of Geo. II. *cap.* 31, fixes the “punishment of persons who shall aid or assist prisoners “to attempt to escape out of lawful custody.” This varies with the degree of punishment previously denounced against the convicted prisoner. It is not necessary, however, to quote the words of the act.

The statute 59. of Geo. III. *cap.* 61, “to enable “counties and stewartries in Scotland to give aid to “royal burghs situated therein, for the purpose of improving, enlarging or rebuilding their jails; or to improve, enlarge or rebuild common gaols of counties “and stewartries which are not the gaols of burghs,” is as follows :

“Whereas the gaols in the different royal burghs in Scotland are in general insecure and incommodious: And whereas, although by the law of Scotland burghs are bound to “provide and maintain proper gaols, yet the means of many “such burghs are insufficient for the necessary improvement thereof; wherefore it is expedient that counties and stewartries in Scotland should be enabled to contribute towards the expense that may be required for improving, “enlarging or rebuilding the gaols of the royal burghs “of Scotland, within the same: And whereas it is expedient that when common gaols of counties and stewartries in Scotland are not the gaols of royal burghs, such “counties and stewartries should be enabled to improve, “enlarge or rebuild such common gaols:” Be it enacted, &c. That if the magistrates and council of any royal burgh shall deem it expedient to solicit aid and assistance

from the county or stewartry in which the same shall be situated, towards improving, enlarging or rebuilding the gaol of any such royal burgh, they shall transmit to the Clerk of Supply of such county or stewartry, a proposal in writing for the consideration of the Commissioners of Supply of such county or stewartry.

II. And be it enacted, That the said clerk of supply, upon receiving such proposal, shall transmit it without delay to the convener, who shall call a meeting of the Commissioners of Supply of such county or stewartry, for the consideration of the said proposal, by public advertisement in one or more newspapers published in said county or stewartry, or if no newspaper is published therein, by advertisement in such newspaper or newspapers as the convener usually intimates public county meetings in for the said county or stewartry, of which meeting six weeks' previous notice at the least shall be given.

III. And be it further enacted, That no person shall be entitled to vote at any meeting to be held under this act, who shall not be a Commissioner of Supply, possessed of the *dominium utile* of lands valued at L.100 Scots, or the factor of an absent Commissioner of Supply so qualified, duly authorised to attend and vote for his constituent at such meeting.

IV. And be it enacted, That it shall and may be lawful for such Commissioners of Supply, or a majority of them, at any such meeting, if they shall think fit, before coming to a final resolution upon any such proposal, to appoint a committee of their number to confer with the magistrates and town-council making such proposals, and for the purpose of arranging with them all the details that may be necessary to enable the Commissioners of Supply to satisfy themselves as to the propriety of affording aid towards the purpose solicited, and for settling the plan or plans necessary for the execution of the work, and for ascertaining the expense thereof.

V. And be it enacted, That after being satisfied as to the propriety of affording such aid, and also as to all such details as may be necessary for settling the plan of the work, and the expense thereof, it shall and may be lawful for the said Commissioners of Supply, at any meeting specially called for that purpose, or a majority of them then assembled, to resolve to give such aid as they may think fit towards improving, enlarging or rebuilding any such gaol.

VI. And be it enacted, That a copy of the resolutions of such meeting, signed by the Clerk of Supply of such county or stewartry, shall thereupon be transmitted to the magistrates and town-council of the burgh by whom such proposal shall have been made; and if within fourteen days after such resolutions shall have been received by such magistrates and town-council, they shall signify their willingness to such Clerk of Supply to proceed to improve, enlarge or rebuild their gaol, in the manner that shall have been expressed in such resolutions, then the Commissioners of Supply of such county or stewartry shall be and become bound to raise the money they shall have agreed to contribute for the purpose specified in such resolutions so transmitted as aforesaid, by an assessment, which they are hereby authorised to make in the manner directed by this act.

VII. And be it enacted, That such assessment shall be made as follows; namely, upon all lands and heritages contained in the valuation books of such county or stewartry, according to the valued rent of such lands and heritages, and upon all inhabited houses within such county or stewartry, of the annual value of five pounds Sterling or upwards, according to such annual value; that is to say, for every five pounds Scots that shall be assessed on every one hundred pounds Scots of the valued rent of lands and heritages, there shall be assessed the sum of one penny Sterling on every pound Sterling of the annual value, according to which such inhabited houses shall be assessed for the house

tax ; but it is hereby expressly provided and declared, that inhabited houses, though of the annual value of five pounds Sterling or upwards, erected or to be erected on lands valued in the valuation books of the said county or stewartry, and chargeable with assessment imposed by this act on lands and heritages so valued to a greater amount than the sum for which the said inhabited houses would be chargeable under this act, shall not also be liable to the assessment hereby imposed on inhabited houses of the aforesaid value.

VIII. And be it further enacted, That such assessment shall be made in the proportions aforesaid, by such Commissioners of Supply, at a meeting to be held for that purpose, and shall be directed to be levied at such times as shall be specified in the order making the assessment, so that the sums resolved to be levied may be collected within the period requisite for accomplishing the purposes for which such aid or assistance shall have been resolved to be given.

IX. And be it enacted, That such assessment upon lands and heritages shall be collected by the collector of the cess in such county or stewartry, and such assessment upon inhabited houses shall be collected by the collector of the assessed taxes levied upon such houses ; and all the powers and authorities granted by any act or acts of Parliament to such collector of the land-tax, and to such collector of the assessed taxes, for the levying and recovering thereof respectively, are hereby given and granted for the levying and recovering of such assessment.

X. And be it enacted, That all sums of money levied by any such collector of the land-tax, or collector of the assessed taxes respectively, for or in respect of such assessment, shall, after retaining an allowance for their trouble, not exceeding the allowance made to them for collecting the land-tax and assessed taxes respectively, be paid over and accounted for by every such collector, to such person or persons, and at such time or times, as shall be directed by the

said Commissioners of Supply : and if any such collector shall not so pay and account for the same accordingly, every such collector so making default shall forfeit double the sum so neglected to be paid, to be recovered with interest thereon by the Clerk of the Commissioners of Supply, who shall sue for the same before the judge-ordinary of the bounds, with costs or expenses of process ; and such forfeiture shall be applied to the purposes for which such assessment was imposed and levied.

XI. And be it enacted, That the amount of every such assessment shall be wholly paid by the owners of lands as well as houses : Provided nevertheless, that the whole of such assessment upon houses shall be paid by the occupiers thereof in the first instance ; but they shall be entitled, and they are hereby authorised, to retain from their landlords, out of the first year's rent, the whole amount of such assessment, which such landlords are hereby required and obliged to allow as part of the rent due for such inhabited houses, on production and delivery of the collector's receipt for the same.

XII. And be it enacted, That in all cases where any common gaol of any county or stewartry in Scotland is not the gaol of a royal burgh, it shall and may be lawful from time to time, for any five or more of the Commissioners of Supply of any such county or stewartry, by a writing under their hands addressed to the convener of such county, to require him, within six weeks from the date of such requisition being made, to call a meeting of the Commissioners of Supply of such county or stewartry, to take into consideration the state of such common gaol ; and such convener shall thereupon call such meeting of the Commissioners of Supply of such county or stewartry, to be held within six weeks from the date of the receipt of such requisition, by public advertisement in one or more newspapers published in such county or stewartry ; or if no newspaper is published therein, by

advertisement in such newspaper or newspapers as the convener usually intimates public county meetings in for such county or stewartry.

XIII. And be it enacted, That at such meeting, or at some adjournment thereof, such Commissioners of Supply shall settle and determine whether any, and what improvement or enlargement of such common gaol is necessary, or if it is necessary to rebuild the same; and before coming to a final resolution as to the plan proper to be adopted, shall and may, if they think fit, appoint a committee of their number to procure plans and estimates, and to arrange all necessary details, to enable the said commissioners to come to a final determination as to the mode of proceeding to be adopted: Provided always, that nothing herein contained shall empower or authorise the rebuilding of such common gaol of any county or stewartry in any burgh or town, other than the burgh or town in which such common gaol is at present situated.

XIV. And be it enacted, That at such first meeting, or at some adjournment thereof, it shall and may be lawful for the said Commissioners of Supply, or a majority of them, to resolve and determine to what amount such county or stewartry shall be assessed for the improvement, enlargement, or rebuilding of any common gaol therein, and shall then, or at some subsequent meeting, to be held for that purpose, make such assessment, and direct the same to be levied at such times as shall be specified in the order making the assessment, so that the sums resolved and determined to be levied may be collected within the period requisite for accomplishing the purposes for which the same is to be levied; which assessment shall to such amount be made and collected in the manner herein before directed with regard to assessments on counties and stewartries, for aid to royal burghs, towards improving, enlarging, and rebuilding their gaols.

XV. And be it enacted, That every proprietor of an en-



tailed estate, who shall pay assessments under this act, shall be a creditor to the succeeding heirs of entail in the manner after mentioned, for three-fourth parts of the money so to be paid.

XVI. And be it enacted, That the person or persons having right to the claim arising from money so to be paid as aforesaid, by the proprietor of an entailed estate, in discharge of assessments under this act, may, after the expiration of one year from the death of such proprietor, require the heirs succeeding to such estate to repay the said three-fourth parts of the said money so paid, with the legal interest thereof, from the term at which the said succeeding heir's right to the rents of the estate shall commence, upon receiving a proper assignment and conveyance of the said claim; and if the money so due be not paid within three months after such requisition, it shall be lawful for the person or persons having right thereto, to sue the said heirs in the manner directed for the recovery of money expended in the improvements of entailed estates, by an act passed the tenth year of the reign of his present Majesty, intituled, An act to encourage the improvement of lands, tenements, and hereditaments, in that part of Great Britain called Scotland, held under the settlements of strict entail.

XVII. And be it enacted, That the same rules of relief among succeeding heirs of entail, and their heirs and their successors, of the claims for debt, and of preference in competition of rents, and in subjecting defenders to the payment of costs, shall take place with regard to monies expended by the proprietors of entailed estates, in payment of assessments under this act, as are enacted by the said act, passed in the tenth year of the reign of his present Majesty, with respect to monies expended by proprietors of entailed estates in making improvements upon their estates, for increasing the rents and value thereof.

XVIII. And be it enacted, That such Commissioners of Supply shall have power, and they are hereby authorised and

empowered, to borrow and take up at interest, on the security of the assessment hereby authorised to be levied, such sum or sums of money as they shall judge requisite for defraying the share or proportion of the expense of improving, enlarging, or rebuilding any gaol, towards the expense of which they may think fit to contribute; or for improving, enlarging, or rebuilding such common gaol of the county or stewartry, as the case may be; provided that the whole amount of the money so borrowed shall not exceed such sum as they shall have resolved to contribute; and it shall be lawful for such Commissioners of Supply, and they are hereby empowered, to assign or make over the whole or any part of the assessment hereby authorised to be made, to any person or persons willing to lend money on the security thereof, at a rate not exceeding five pounds Sterling *per centum per annum*; and every such assignment shall be made and executed by the clerk of supply, being specially authorised to do so, at a general meeting of the Commissioners of Supply, and shall be entered into a book or books to be kept by him for that purpose; which book or books may be seen and perused by any person or persons interested therein, without fee or reward; and all such assignments so executed shall be transferable by indorsement, duly subscribed by the party transferring, in the presence of one or more subscribing witness or witnesses.

XIX. And be it enacted, That it shall and may be lawful for such Commissioners of Supply to appoint a committee of their number to superintend the execution of any work to which they may so contribute, or which they may so resolve to execute (as the case may be,) and the proper application of the money contributed for that purpose.

XX. And be it enacted, That when the gaol of any royal burgh, to the improving, enlarging or rebuilding of which, aid shall have been afforded under this act, shall have been completed, and with any yards, courts, out-offices, or con-

veniences therein, shall be used for confining debtors, felons, vagrants, and other delinquents, the magistrates and town-council of the burgh wherein the same shall be situated, and the gaoler or keeper, gaolers or keepers of such gaol, shall be respectively answerable, to all intents and purposes whatsoever, for the safe custody of all such persons as shall from time to time be committed to his or their custody in such gaol, in the like manner as any magistrates and town-council, and the gaolers employed by them, now are by law liable; and such magistrates and council shall have the same power over such gaol, and the gaolers and keepers thereof, and the debtors, felons, vagrants, and other delinquents who shall be confined therein, as they had in the gaol before the same shall have been improved, enlarged, or rebuilt; and such magistrates and town-council, so soon as any such gaol, so improved, enlarged, or rebuilt, shall be delivered over to them, shall be bound and obliged to keep and maintain the same in good and sufficient repair from the funds of the burgh in all time coming.

XXI. And be it further enacted, that if it shall be found necessary, for the purpose of improving, enlarging, or rebuilding any gaol of any royal burgh now existing, that the prisoners therein should be removed during the period of such improvement, enlargement, or rebuilding, it shall be lawful for the magistrates of the burgh within which such gaol is situated, to remove such prisoner or prisoners to any secure place of confinement within the said burgh, or to any other gaol within the said county or stewartry, until such improvement, enlargement or rebuilding shall be completed; and it shall be lawful for all persons legally authorised to commit other debtors, felons, and delinquents, to commit them to the same; and when any such improved, enlarged, or new gaol shall be fit for the reception of prisoners, it shall be lawful for the magistrates and town-council of the burgh in which such improved, enlarged, or new gaol shall be situat-

ed, and the keeper or keepers of such gaol, to remove there- to all such debtors, felons, and other prisoners, as shall then be confined in such other secure place of confinement; and such removal or removals, and the airings or exercising of the prisoners who shall be confined in the improved, enlarg- ed, or new gaol, in any yards, courts, out-offices, or conve- niences thereto belonging, shall not be deemed, or taken to be an escape or escapes: Provided always, that the magis- trates of such burghs shall continue to be responsible for the safe custody of all such debtors, felons, and other prisoners, during their removal to or confinement in such other place of confinement.

XXII. And be it enacted, That if it shall be found ne- cessary for the improving, enlarging or rebuilding any com- mon gaol, within any county or stewartry, not being the gaol of a royal burgh, that the prisoners therein should be re- moved during the period of such improvement, enlargement or rebuilding, it shall be lawful for the justices of the peace for such county or stewartry in general sessions assembled, to direct the removal of such prisoners, and for all persons legally authorised to commit other debtors, felons and de- linquents, to any secure place of confinement within such county or stewartry, until such improvement, enlargement or rebuilding shall be completed; and when any such im- proved, enlarged or new gaol shall be fit for the reception of prisoners, it shall be lawful for such justices so assembled as aforesaid, to direct the removal thereto, of all such debtors, felons, or other prisoners as shall then be confined in such secure place of confinement, and should by law be confined in such common gaol of the county or stewartry; and such removal and removals, and the airings and exercisings of the prisoners who shall be confined in such improved, enlarged or new gaol, in any yards, courts, out-offices or conveniences thereto belonging, shall not be deemed or taken to be an

escape or escapes; and the legal responsibility for the safe custody of all persons committed to such gaol, and the burden and obligation to keep and maintain the same in good condition, shall, after such improvement, enlargement or rebuilding, be no ways altered thereby, or by any thing in this act contained.

XXIII. And be it enacted, That if any person or persons shall think himself, herself or themselves aggrieved by any assessment imposed by virtue of this act, it shall and may be lawful for such person or persons, within three months after any such assessment shall have been demanded, but not afterwards, to appeal against the same to the justices of the peace at the quarter sessions of the county or stewartry wherein the subject-matter of the complaint shall have arisen; giving fourteen days' notice of such appeal to the collector of the assessment, and lodging with such appeal a bond, with sufficient surety or caution for fulfilling and implementing the sentence to be pronounced, and for paying such expenses as shall be awarded by the said justices of the peace, who are hereby authorised to determine the matter in dispute, and their judgment shall be exclusive of all other jurisdiction, and shall be final and conclusive without being subject to review in any court whatsoever.

XXIV. And be it further enacted, That no action or suit shall be commenced against any person or persons, for any thing done in pursuance or by virtue of this act, after six calendar months from the time the fact was committed, or the cause of action had occurred for which such action or suit shall be brought; and the defender or the defenders in any such action or suit may produce this act, and plead that the same was done by authority and in virtue thereof; and if it shall appear so to be done, or if any such action or suit shall be brought after the time hereby limited for bringing the same, then and in such case the defender or defenders

shall be assoilzied from such action or suit, and the pursuer or pursuers therein shall be found liable to pay the whole expense of process incurred by the defender or defenders.

XXV. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded.

Act of sederunt, 11. Feb. 1671, Magistrates must have sufficient prisons.—Act of sederunt, 14. June 1671, Magistrates shall not allow prisoners to go out, except in cases of sickness.—Act of sederunt, 5. Feb. 1675, and 18. July 1750, Magistrates may liberate prisoners, when a discharge is presented.

See title “*Bankrupt*.”

#### IX. CONVENTION OF ROYAL BURGHS.

The object of these conventions, and the obligation on the burghs to send commissioners, are fully set forth in the statutes appointing them to be held.

The act 1487, *cap.* 111, requiring, “That commissioners of burghs compear once in the year in Inver-keithing,” declares the purpose of the meeting to be,

To commoun and treate upon the weilfare of merchandice, the gude rule and statutes for the commoun profite of burrowes; and to provide for remeid upon the skaith and injuries susteined within the burrowes; and quhat burgh that compeiris not the said daie be their commissares, to paye to the coastes of the commissares five pound; and zearly to have our Soveraine Lordis letter to destreinzie herefore, and for the inbringing of the samin.

The act 1578, *cap.* 64, confirms all privileges grant-

ed to burghs, and the inhabitants of burghs, “ with this  
 “ addition, Giving them freedom and privilege to con-  
 “ vene four times in the year for such matters as con-  
 “ cern their estate, and that in what burgh it shall be  
 “ thought most expedient by the most part of the said  
 “ burghs : Providing always, for eschewing of tumults,  
 “ that there be present at the said conventions for every  
 “ burgh in number one, except the town of Edinburgh,  
 “ to have one more than the other burghs.”

The act 1581, *cap.* 119, ratifies and confirms these statutes : And,

For the better observation of the saidis conventiones be sik burrows, as hes heretofore not sent their commissioners at onie time thereto, hes statute and ordained, that in time cumming, quhen onie conventiones of burrowes is appoynted, be the maist part of the saidis burrowes, or be the burgh of Edinburgh, and onie sex or aucht of the rest, the burgh warned thereto be ane missive bill of the provest and baillies of the burgh, quhair the said convention is to be halden, or utherwayes lauchfullie cited thereto, and not compeirand be their commissioner sufficientlie instructed, sall pay for the charges of the burghes that sall convene the summe of twentie pundes; and ordainis the Lordes of Councell and Session to grant and direct letters of horning or poynding against the burrowes absent fra the same convention, and adjudged bee the remanent burrowes to have incurred the said paine and unlaw; and this at the instance of the burgh of Edinburgh, without farther proces or calling of pairty thereto; the saids Lords seand the act authenticklie subscribed be the clerk of that convention, that they ar absent and convict, as said is.

#### DECISIONS.

*Mill v. Magistrates of Montrose*, 28. Jan. 1824.—Trades

and Magistrates of Inverness *v.* Guildry, 11. Feb. 1724.—Magistrates of Inverkeithing, 29. Jan. 1745.—Anderson, &c. *v.* Sinclair, &c. 19. Nov. 1748.—Stodart, &c. *v.* Dalrymple, &c. 7. Aug. 1778.—Gardiner *v.* Magistrates of Kùrenny, 9. March 1826.

#### X. RUINOUS HOUSES.

Houses in burgh may fall into decay in consequence of the culpable or even wilful neglect of the proprietors. This may happen in the case of liferenters, who are unwilling to be at the expense of repairs, which are chiefly to benefit the fiars. But damage to the adjacent houses, and danger, or even great deformity occasioned by such neglect, call upon the magistrate to interfere. Accordingly there are two acts which give special directions on the subject.

The statute 1594, *cap.* 226, “ anent the upholding “ of the decayed lands within burgh,” ordains,

That the provest and baillies of ilke burgh sall, at the instance of the heritoures of the landes within the samin, upon citation of the partie, take summar cognition of the estaite of the landes, houses, or tenementes within the burgh, be ane condigne inquest of the nichtboures thereof; and gif the samin be found aulde, decayed, and ruinous in ruife, sclaites, dures, windowes, fluring, loftis, tymmer-wark, and walles, or onie of them, and ane land bigged of aulde, and throw lang time decayed, in sik sort that it be already inhabitable, or that within short time may becum inhabitable, in that case, to decerne that the conjunct fear or life-renter sall repaire the saids landes, and tenementes in the partes theirow decayed, as sall be found be the said inquest, within



the space of zeire and day nixt after they be required their-  
to be the heritours ; and failzeing thereof, declairis that it  
sall be frie to the heretour to enter to the possession of the  
same, to have the setting, raising, using and disponing their-  
upon, in all time cumming, as gif there war na life-rent, or  
conjunct fee standing their of : Providing alwaies, that suf-  
ficient security in the burgh, quhair the landes or tene-  
mentes lyis, be tane, for termelie payment to the conjunct  
fears or life-renteris their of, induring their life-time, of sik  
maill and dewtie, as the samin presentlie gives the time of  
the said cognition, or nicht reasonable give in that estait,  
in case it be not presentlie set, deduceand alwaies the annu-  
alles, and other burding laynd their upon : And this to be  
extended to all brunt and waist lands, and against all con-  
junct fears present and to cum within burgh.

And the act 1663, *cap.* 6, “ anent ruinous houses  
“ in royal burghs,” after stating in the preamble the  
necessity for repairing them to prevent accidents,

Ordain the provest and bailies of the burgh where such  
ruinous houses are, to cause warn and charge all persons,  
that have or pretends right to the property of such lands  
and buildings, or any annual-rents forth their of, to cause  
build or repair, in a decent way, within year and day, such  
houses and buildings as have been wast and not inhabited  
three years before the date of this present act, or shall be  
wast and not inhabited thereafter by the foresaid space of  
three years, or else to sell the same to others, to be build-  
ed within the same space of year and day ; and to charge  
all known persons, personally or at their dwelling places,  
and by open proclamation at the paroch-kirk or mercat-  
cross of the burgh ; and all others by open proclamation  
at the said mercat-cross and paroch-kirk ; and in case of  
their absence out of this realm, at the cross of Edinburgh,  
and peer and shoar of Leith, upon threescore dayes, with

certificatiou to them if they failzie, the said provest and bailies shall cause the saids lands and tenements to be valued by certain persons, to be chosen and sworn by them for that effect, and sell the same to any person that will buy them, and pay the price of the same to these owners, if they be known; and if they be not known, to consign the prices thereof in the hands of the provest, one of the baillies, or dean of gild of the said burgh, to be forthcoming to these who have interest thereto; and if no man will buy them, it shall be lawfull to the said provest and baillies, after apprising thereof, as said is, and payment or consignment of the prices of the same, to cast down the said ruinous houses and cause build the same of new: And his Majesty, with advice foresaid, declares, That it shall not be lawful in time coming, to any maner of person to pursue them nor their successors therefore, nor pretend any right or interest thereto, but that the said right shall be a perfect security to the builders thereof and their successors.

#### XI. ARRESTING STRANGERS.

The act 1672, *cap.* 8, relates to the arrestment of strangers, or those who are not domiciled in the burgh, for debts due to inhabitant burgesses. It is in these terms:

Our Sovereign Lord considering, that the burrows royal have been in use to arreast strangers, who live without their respective burghs, for all debts due by them to any of the inhabitants, burgesses of the said royal burrows, any maner of way, without distinction; do daily force them to find caution to compear before the town-courts, or otherwise go to prison, to the great hurt and prejudice of the leiges, who, being strangers, and not able to find caution within burgh, are oftentimes summarly incarcerat, without any just cause,

to their great damage, expences, and disgrace : For remeid whereof, his Majesty, with advice and consent of his Estates of Parliament, statutes and ordains, that, in time coming, no burgesse nor other inhabitant of any royal burgh shall have power, or be permitted, to arreast any of his Majesty's subjects of this kingdom, who live outwith the burgh, or force them to find caution, or imprison them as said is, for any debt whatsoever, except allanerly for horse-meat or mansmeat, abuilzements, or other merchandice due by strangers to burgesses : for which they have no other security but their own compt-books ; and for which the said priviledge of arreastment shall only be competent to the merchant, innkeeper, or stabler, *respectivè*, from whom the samin was gotten, and to whom it was originally addebted ; so that in case the samin be assigned to any other burgess, the assignee shall not have the benefit of that priviledge : And siklike, if strangers have given band or other security for the mansmeat, horse-meat, abuilzements, or other merchandice, the merchant, innkeeper, or stabler, *respective*, shall not have the benefit of the foresaid priviledge, but shall be left to pursue for their respective debts before the judge ordinar as accords. And in regard that burghs of regality and barony do assume the same priviledge ; therefore his Majesty, with advice foresaid, inhibits and discharges the magistrates of these burghs to arreast or incarcerat any persons who are not burgesses, inhabitants in their burgh, for any maner of debt : And it is hereby declared, That if any magistrate of any burgh shall presume to do in the contrair hereof, they shall be punished for wrongous imprisonment of his Majesties leiges.

## DECISIONS.

Salmon *v.* Lindsay, 19. July 1623, and case of the Town of Edinburgh, 1. March 1626, Mor. p. 1983.—Haliburton *v.* Simpson, 24. Jan. 1650, Sup. I. 473.—Kincaid, 29.

Nov. 1609, *ib.* 1982.—*Dick v. Town of Edinburgh*, 22.  
Feb. 1677, *ib.* 1984, and Sup. III. 132.—*Alston v. Ross*,  
Jan. 1682, Sup. II. 29, and III. 486.—*Scot v. Sandilands*,  
&c. 7. Dec. 1744, Dict. p. 1929.

## XII. SEISINS IN BURGH.

The purpose of the act 1567, *cap.* 27, is to secure to the public accurate information regarding the rights and burdens affecting property within burgh. It enacts, “ That no seisin be given within burgh of any “ manner of land or tenement within the same in any “ time coming, but by one of the bailies of the burgh “ and common clerk thereof; and, if any seisin be “ otherways given, hereafter to be null, and of none a- “ vail, force nor effect.”

And by the act 1681, *cap.* 11, all seisins and reversions within burgh must be recorded in the court-books of the burgh within sixty days from their date.

See title “ *Registration.*”

## XIII. CONFIRMATION OF PRIVILEGES.

This title shall be closed with a notice of those statutes which confirm all previous acts in favour of royal burghs.

The act 1563, *cap.* 86, is as follows :

*Item*, Our said Sovereine Ladie, with advise of hir saidis three Estaites in this present Parliament, ratifies, apprievis, and confirmis all actes of Parliament, statutes, priviledges,

and immunities quhatsumever given and granted be our said Sovereine Ladie, or uthers her predecessoures quhatsumever, in favoures of the burrowes, provestes, aldermen, bailies, communities, and indwellers within the samin, with all letters and executorialles, that hes past or may passe thereupon, givand expresse command be thir presentes, to the Lordes of our Sovereine Ladies College of Justice and Session, to give and direct sik reasonable letters, as they or onie of them will desire, or hes had of before: commanding and chargeing all our Sovereine Ladies lieges and subjectes, that nane of them take upon hand to attempt, or pretend to attempt, violate or breake the foresaides lawes, actes of Parliament, statutes, ordinances, immunities, or uthers priviledges quhatsumever, given and granted in favoures of the saides burrowes, under the paines contained in the samin, and under all paine and offense, that they and everie ane of them may incur, against our Sovereine Ladies authority royal theirthrow.

The act 1567, *cap.* 26, “ anent privileges granted “ to burghs,” is as follows :

*Item*, Our Sovereigne Lord, with advise of his Regent, and the three Estaites of this present Parliament, hes ratified and appreved, and be thir presentes ratifies and appreves, all actes and constitutiones of Parliament, maid bee quhatsumever our Sovereine Lordis predecessoures of befoir, in favouris of the burrowes and burgesses of all this realme, inhabitantes of the samin, with all priviledges, freedoms, immunities and liberties, granted and given to them, and everie ane of them, in ony times by-past : And decernis and declaris the samin to have full strength, force, and effect, in all times heirafter, swa that the samin may be put to full and dew execution in all poyntes, and to stand as ane perpetual law to them and their successouris.

The act 1578, *cap.* 64, ratifies the privileges of burghs, and contains the clause relative to convention of royal burghs already quoted.

The act 1579, *cap.* 85, is to the same purpose.

The act 1594, *cap.* 225, " anent the privileges of " burghs," is in the following terms :

Our Sovereine Lorde, with advise of his Estaites in this present Parliament, ratifies, apprievis and confirmis, the acte and statute maid in his Hienes' Parliament, halden at Edinburgh, upon the fifth daie of Junij, the zeir of God ane thousand five hundreth fourscoir twelve zeires, in favours of the free burrowes of this realme, and their liberties and privileges, against unfree trafficquers, and anent using of craftes in all the suburbes of the saidis burrowes ; specialie bearing, that all maner of persons, inhabitants of the saidis burrowes, exercean ony maner of traffick in merchandice, or having exchange within the same, sall beare their pairt of all stentes and taxationes, watching and warding, in all dewties perteining to our Sovereine Lord, the weill of the realme, and utilitie of the burgh, as at length is contained in the said act, and all clauses and conditiones therein contained, with this addition, that the samin sall be extended to all merchandes or craftesmen, alsweill free as unfree, that has na uther dwelling-place but within burgh, and hes their commoditie within the same burgh, and bearis na burden of taxation without the same burgh.

The act 1606, *cap.* 16, " ratifies, approves, and confirms all acts of Parliament and laws, with all freedoms, privileges, immunities, and liberties granted to " the burghs regal within this realm by our Sovereign " Lord, or any of his Highness' predecessors at any " time of before : And decerns and declares the said " burghs, and every one of them, to have good right to

“bruike their said privileges and liberties, as they were  
“wont to do before.”

The act 1607, *cap.* 5, is a general ratification of the same kind.

The act 1638, *cap.* 24, is also a confirmation of all previous statutes in favour of burghs and burgesses :

And specially, without prejudice of the generalitie above-written, his Majesty and Estates ratifie the act of Parliament made by his Highnesse Grand-father, umwhile King James the Third, 1466 : His second Parliament, *cap.* 11. ordaining that none saile nor passe in merchandise out of the realme but free-men, burgesses dwelling within burgh, or their familiar factors, servants being with them in houshold at meat and drink, (excepting and reserving to the Prelates, lords, barons, and clerks, as in the said act is contained, and all other exceptions contained in any act of Parliament in force, preceeding the day and date hereof) : And sicklike the act of Parliament made by King James the Fourth of wor-thie memorie, in the Parliament holden at Edinburgh the elleventh day of March 1503 yeares, *cap.* 84, ordaining that no person dwelling out of burrowes use any merchandise, nor yet buy nor sell wine, wax, silkes, spicerie, wad, nor sicklike stuffe, nor yet staple goods : and that none pack nor peill in Leith, nor other places without the King's burrowes, under the paine of escheat of the goods that be topped, sould, packed, or peilled, contrary to that statute : And sicklike the 152 act of umwhile King James the Sixth, his 12 Parliament, ordaining that no person exercise the traf-fique of merchandise, but burgesses of free burrows, under paine of escheat of their whole goods and geare, the one half to his Majestie, and the other half to the burgh apprehender, and giving power to every burgh by themselves or a collector, or commissioner depute by them, to search the saids un-freemen's goods, intromet therewith as escheat, ei-

ther within the countrey, or any other part, to arreast, call, follow and pursue before unsuspect baillies to be creat by them: As also the sixth act of King James the Sixth, his ninth Parliament, ordaining letters of horning to be direct against unfreemen, not being burgesses of the free royal burrowes, to finde caution from desisting from usurping of their liberties, in all the heads, clauses, articles and circumstances thereof: Likeas his Majestie and Estates declare, that the saids liberties and priviledges, mentioned in the saids acts, are only proper and competent to the free burrowes royal, that have vote in Parliament, and beare burden with the rest of the burrowes, and to no others: prohibiting and discharging all persons who are not burgesses of the saids free royal burrowes, and bear not burden with the rest, of all using and exercising of the liberties and priviledges foresaids, in all time comming: And ordaine, that letters of horning may be direct by the Lords of Council at the instance of all burrowes upon the foresaids privileges and former acts of Parliament made thereupon, and this present act in all times to come, for putting of the same to due execution with all rigour against them that do, or come in the contrary of the acts and priviledges foresaids, without calling of any partie.

Lastly, Article XXI. of the treaty of Union declares, "that the rights and privileges of the royal burghs in Scotland, as they now are, do remain entire after the Union, and notwithstanding thereof."

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CESSIO BONORUM.—See BANKRUPT.

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### CHILD MURDER.

By the act 1690, *cap.* 21, it was declared, that concealment of pregnancy, and the child being found dead



or amissing, fixed the guilt of murder on the mother of the child.

But this statute has been repealed by the act 49. of Geo. III. *cap.* 14, which is in the following terms :

“ Whereas by an act of the Parliament of Scotland, passed in the second session of the first Parliament of King William and Queen Mary, intituled, Act anent murdering of children, it is enacted, That if any woman shall conceal her being with child during the whole space, and shall not call for and make use of help and assistance in the birth, the child being found dead or amissing, the mother shall be holden and reputed the murderer of her own child : And whereas the punishment of death has been found too rigorous for such an offence ; but nevertheless, it is expedient that it should be repressed, and punished suitably to the quality and degree : May it therefore please your Majesty that it may be enacted, and be it enacted,” That from and after the passing of this act, the said in part recited act of the Parliament of Scotland shall be, and the same is hereby repealed.

II. And be it further enacted, That if, from and after the passing of this act any woman in that part of Great Britain called Scotland, shall conceal her being with child during the whole period of her pregnancy, and shall not call for and make use of help or assistance in the birth, and if the child be found dead or be amissing, the mother being lawfully convicted thereof, shall be imprisoned for a period not exceeding two years, in such common gaol or prison as the Court before which she is tried shall direct or appoint.

These statutes apply only to children *upon the birth*. If the child shall have been known to exist, the crime is no less than murder at common law.

Baron Hume's Com. I. 286.

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COLLIERS.

At one period, the condition of colliers and salters in Scotland resembled a state of slavery. This appears from the terms of the act 1606, *cap.* 11, "anent colliers and salters."

A great change took place in consequence of the statute 15. Geo. III. *cap.* 28, passed for the purpose of "altering, explaining, and amending several acts of the Parliament of Scotland respecting colliers, coal-bearers and salters."

But the final and important statute on the subject is the act 39. of Geo. III. *cap.* 56, "to explain and amend the laws relative to colliers, in that part of Great Britain called Scotland," and which is as follows :

"Whereas, before the passing of an act of the fifteenth year of his present Majesty, entitled, an Act for altering, explaining and amending several of the acts of the Parliament of Scotland, respecting colliers, coal-bearers and salters, many colliers, coal-bearers and salters were bound for life to, and transferable with the collieries and salt-works where they worked; but by the said act their bondage was taken off, and they were declared to be free, under the conditions therein mentioned, notwithstanding which many colliers and coal-bearers still continue in a state of bondage, from not having complied with the provisions, or from having become subject to the penalties in the said act:" May it therefore please your Majesty that it may be enacted, and be it enacted, That from and after

the passing of this act all the colliers in Scotland, who were bound colliers at the time of passing the said act shall be, and they are hereby declared to be free from their servitude, and in the same situation in every respect as if they had regularly obtained a decree in the manner directed by the said act.

“ II. And whereas, by an act of the Scots Parliament, viz. “ of the 22d Parliament of James VI. (28th June 1617,) “ chap. 8., and by another act of the Scots Parliament, viz. “ of the first Parliament of Charles II. (in January 1661,) “ chap. 38., it is enacted, That the justices of the peace for “ the several counties and stewartries in Scotland shall appoint, at the quarter sessions to be kept in August and February, the ordinary hire and wages of labourers, workmen and servants, and who shall refuse to serve upon the price set down by them shall be imprisoned, and further punished at their discretion; and to the effect servants may be the more willing to obey the ordinances to be made by the justices for the said fees, the said justices shall have power to decern and compel the master to make payment of the fees appointed by their ordinance, in case the servants please rather to sue for the same before them than before the judge-ordinary; and whereas doubts have arisen, whether the powers given to the justices of the peace by the two acts of the Scottish Parliament above recited extend to colliers:’ be it enacted and declared, That the said two acts of the Scottish Parliament, viz. the aforesaid act of the 22d Parliament of King James VI. (28th of June 1617,) chap. 8., and the foresaid act of first Parliament King Charles II. (1st January 1661,) chap. 38., in so far as the same relate to the fixing and appointing of the ordinary hire and wages of labourers, workmen and servants, do extend to and include colliers, coal-hewers, coal-bearers, and all other persons of every description employed at collieries in Scotland; and such and the like powers and authorities, rights,

remedies, and privileges conferred by these statutes relative to the fixing and appointing of the ordinary hire and wages of labourers, workmen and servants, are hereby given, conferred and granted, and declared to extend and apply to colliers, coal-hewers, coal-bearers, and all other persons of every description employed at collieries in that part of Great Britain called Scotland.

III. Provided always, and be it enacted, That such powers and authorities shall only be exercised upon the application of the party or parties aggrieved.

IV. And be it enacted, That any two or more justices may and shall exercise, upon the like application so to be made to them, all the powers and authorities which are given by the aforesaid statutes to the said justices at their quarter session, in such manner as is therein provided.

“ V. And whereas there is a general practice among the “ coal-owners and lessees of coal, of advancing considerable “ sums to their colliers, or for their behoof, much beyond “ what the colliers are able to pay, which sums are advanced for the purpose of tempting them to enter into or continue their engagements, notwithstanding the sums so advanced are kept up as debts against the colliers :” Be it therefore further enacted, That no diligence or action shall be competent for any sum or sums of money hereafter to be lent or advanced to colliers, or other persons employed at the collieries as aforesaid, by the coal-owner or lessee of any colliery, or by any other person or persons on their behalf, or for any debts due by colliers, or other persons as aforesaid, which shall be acquired by the said coal-owners or lessees, or by others on their account, either previous to their engagement, or during the currency thereof, and in view of the same ; excepting always such sum or sums as shall be advanced to any collier, or other person employed at collieries as aforesaid, during the currency of his or her service, for the support of his or her family in case of sickness.

VI. Provided always, and be it enacted, That it shall and may be lawful to the coal-owner or lessee, who shall lend or advance such sum or sums of money, to retain from the wages of the colliers, or others foresaid, to whom the same shall be so lent or advanced, one-twelfth part of the said sum or sums weekly, till the principal sum or sums, without interest, so advanced, be paid up; but declaring, that if the engagement of such collier shall expire before the principal sum or sums so advanced be fully paid up, the coal-owner or lessee who advanced the same shall have action for the balance, in the same manner as if this act had not passed.

VII. Provided also, and be it enacted, That such debts as were due by colliers to their masters, at or before the passing of this act, shall not be hereby extinguished; and declaring also, that debts due by colliers, or other persons as aforesaid, at or before the passing of this act, to the coal owners or lessees, may be lawfully assigned or transferred to other coal-owners or lessees, with whom they may afterwards engage, with the consent of the debtors themselves; and if assigned with their consent, then the debts so assigned shall be as valid and effectual to the other coal-owners or lessees, as if this act had never passed: Providing always, That the vouchers of all debts due by colliers to coal-owners and lessees of coal, before the passing of this act, or a list of the same, signed by the said coal-owners and lessees, shall be recorded in the Sheriff-court books, within three months after the passing hereof, for which a fee of one shilling shall be paid, and no more; and that all debts, the vouchers of which are not so recorded, shall be held to be null and void, and not recoverable in any court of law.

VIII. And whereas there have of late been many attempts to seduce colliers out of Scotland into foreign countries, be it further enacted, That all persons seducing, or attempting to seduce colliers, or others aforesaid, from the kingdom of Great Britain, shall be punished in the same manner as per-

sons seducing, or attempting to seduce manufacturers or other artisans are punished by law.

IX. Provided always, and be it enacted and declared, That no coal-master or lessee of coal shall act as a justice of peace under this act.

X. And be it further enacted, That the laws now in force against unlawful combinations of whatever kind, shall extend to and include colliers, coal-bearers, and other persons employed at coal-works, as aforesaid, and that nothing in this contained shall extend, or be construed to extend, to alter or repeal any part of the acts of the Parliament of Scotland, relative to colliers, unless in so far as is expressly done by this act, or by the said act of the fifteenth year of his present Majesty.

That part of the above act, which relates to the seducing of colliers to go into foreign parts, has been repealed by the statute 5. of Geo. IV. *cap.* 97.

The statute 57. of Geo. III. *cap.* 122, being an act to extend the provisions of an act of the twelfth year of his late Majesty King George the First, and an act of the twenty-second year of his late Majesty King George the Second, against payment of labourers in goods or by truck, and to secure their payment in the lawful money of this realm, to labourers employed in the collieries, or in the working and getting of coal, in the united kingdom of Great Britain and Ireland, and for extending the provisions of the said acts to Scotland and Ireland, is in the following terms :

“ Whereas, the pernicious practice of paying the wages  
“ of labourers concerned in the woollen trade in goods, was,  
“ by the provisions of an act of the twelfth year of the  
“ reign of his late Majesty King George the First, entitled,

An act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages, prohibited by certain regulations, and under certain penalties therein enacted : And whereas, though the provisions of this act were extended, by the act of the twenty-second year of the reign of his late Majesty King George the Second, intituled, An act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair and silk manufactures ; and for preventing unlawful combinations of journeymen dyers and journeymen hot pressers, and of all persons employed in the said several manufactures, and for the better payment of their wages ; yet the security thereby given, for the receipt of their wages in money, is in neither of these acts extended to labouring men working in collieries, and other businesses connected with the trade of working and getting coal : And whereas great injury and loss have arisen to labouring men working in collieries, and other businesses connected with the getting of coal, from being paid their wages in goods, or by way of truck, or otherwise than in the lawful coin of this realm :”

Be it therefore enacted, &c. That the provisions of the aforesaid act of the twelfth year of the reign of his late Majesty King George the First, which prohibits the payment of the wages of persons employed in the woollen manufacture in goods, and to secure the payment of every part of their wages in good and lawful money of this kingdom, be extended to labourers employed in working and getting coal in the united kingdom of Great Britain and Ireland.

II. And be it further enacted, That all the provisions of the said act, to facilitate the labourers in the woollen trade recovering their wages for which they have stipulated, or to which they are entitled, as well as the provisions imposing a penalty on masters paying labourers in goods, be extend-

ed to persons employed in collieries, and in working and getting coal, in the united kingdom of Great Britain and Ireland, in as full and ample a manner as if they had been enumerated in the aforesaid act; and that all remedies, penalties, modes of delivery, powers and privileges, and all other matters and things therein for these purposes contained, be, and they are hereby extended to parties concerned in coal-works, or connected therewith.

III. And be it also further enacted, That the provisions of the acts of the twelfth year of the reign of his late Majesty King George the First, and of the twenty-second year of the reign of his late Majesty King George the Second, be extended, and are hereby extended, to Scotland and Ireland.

Ersk. I. 7. 61.—Tait's Justice of Peace, p. 68.

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COMBINATION OF WORKMEN. See "ARTIFCERS."

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COMMISSARY. See SHERIFF.

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### COMMONTY.

When a piece of ground is enjoyed by several persons in common, as an appendage of adjacent properties, and not held by separate titles, it is competent to bring a process of division of this commonty, or common property, into shares corresponding to the rights of the parties interested, whether of property or servitude. This form of action is established by the statute 1695, *cap.* 38, which, "for preventing the discords



“ that arise about commonities, and for the more easy  
 “ and expedite deciding thereof in time coming,”

Statutes and ordains, That all commonities, excepting the commonities belonging to the King and royal burroughs: that is, all that belongs to his Majesty in property, or royal burroughs in burghage, may be divided at the instance of any having interest, by summons raised against all persons concerned before the Lords of Session, who are hereby empowered to discuss the relevancy, and to determine upon the rights and interests of all parties concerned, and to value and divide the same, according to the value of the rights and interests of the several parties concerned; and to grant commissions to sheriffs, stewarts, bailies of regality and their deputies, or justices of peace, or others, for perambulating and taking all other necessary probation: which commissions shall be reported to the said Lords, and the said processes ultimately determined by them: And where mosses shall happen to be in the said commonities, with power to the said Lords to divide the said mosses amongst the several parties having interest therein, in manner foresaid; or in case it be instructed to the said Lords, that the said mosses cannot be conveniently divided, his Majesty, with consent foresaid, statutes and declares, that the said mosses shall remain common, with free ish and entry thereto, whether divided or not; declaring also, that the interest of the heritors, having right in the said commonities, shall be estimate according to the valuation of their respective lands or properties, and which divisions are appointed to be made of that part of the commonity that is next adjacent to each heritor's property.

A similar division may be effected in case of the lands of different heritors lying run-rig, in virtue of the statute 1695, *cap.* 23, which is as follows :

Our Sovereign Lord, and the Estates of Parliament, taking

into their consideration, the great disadvantage arising to the whole subjects, from lands lying run rig, and that the same is highly prejudicial to the policy and improvement of the nation, by planting and inclosing, conform to the several laws and acts of Parliament of before made thereanent: for remeid, his Majesty, with the advice and consent of the said Estates, statutes and ordains, That, wherever lands of different heritors ly run-rig, it shall be leisume to either party to apply to the sheriffs, stewarts, and lords of regality, or justices of peace of the several shires where the lands ly, to the effect that these lands may be divided according to their respective interests, who are hereby appointed and authorized for that effect, and that after due and lawful citation of all parties concerned, at a certain day, to be prefixed by the said judge or judges. It is always hereby declared, that the saids judges, in making the foresaid division, shall be, and are hereby restricted, so as special regard may be had to the mansion-houses of the respective heritors, and that there may be allowed and adjudged to them the respective parts of the division, as shall be most commodious to their respective mansion-houses and policy, and which shall not be applicable to the other adjacent heritors. As also, it is hereby provided and declared, That thir presents shall not be extended to the burrough and incorporate acres, but that, notwithstanding hereof, the same shall remain with the heritors to whom they do belong, as if no such act had been made.

Erskine, III. 3. 56.—Tait's Justice of Peace, p. 80.

## DECISIONS.

Gray, 15. Jan. 1777, Mor. App. No. 1. v. "*Runridge*."—  
Douglas, 21. Jan. 1777, *ib*. No. 2.—Taylor, 6. Dec. 1698,  
Mor. 14141.—Sir J. Hall, 7. Dec. 1744, *ib. ib*—Buchanan,  
21. Nov. 1766, *ib*. 14142.—Lord Gray, 17. Jan. 1782,

*ib.* 14151.—Drummond v. Swanston, 18. July 1782.—Murison, 14. July 1780, *ib. ib.*—Jardine, 26. Feb. 1793, *ib.* 14152.—Tillycoultry, Dec. 1739, Mor. 2472.—Duke Hamilton, 21. Feb. 1771, App. 2. Com.—Gall, 31. May 1810, F. C.—Kinloch, 14. Jan. 1814, *ib.*

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### COMPENSATION.

By the statute 1592, *cap.* 141, it is declared, “ that  
 “ any debt *de liquido ad liquidum*, instantly verified  
 “ by writ or oath of the party, before the giving of de-  
 “ creet, be admitted by all judges of this realm by way  
 “ of exception ; but not after the giving thereof in the  
 “ suspension or reduction of the same decreet.”

To render compensation an available defence, the parties must be mutually debtor and creditor to each other in claims of the same quality.

Stair, I. 18. 6.—Ersk. III. 4. 11.—Tait's Justice of Peace, p. 80.

### DECISIONS.

Pearson, 10. March 1814, F. C.—Campbell, 13. Nov. 1823, S. & D. II. 484.—M'Leay, 9. July 1825, S. & D. IV. 161.—Hay, 22. Dec. 1825, *ib.* 344.—M'Kie, 29. Nov. 1774, Mor. 2575.—Campbell, 11. Dec. 1781, *ib.* 2665.—Pearson, 9. Nov. 1672, *ib.* 2625.—Crawford, 8. Feb. 1662, *ib.* 2613.—Mill, 22. Nov. 1825, S. & D. IV. 219.—Baillie, 10. Aug. 1753, Mor. 2680.—Cleland, 5. Feb. 1669, *ib.* 2682.

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COPY-RIGHT.

To encourage literature, and to excite to the cultivation of genius, are the important objects of the various statutes to be included under this title.

The act 1709, *cap.* 18, gives to authors and booksellers, or others, their assignees, a right of exclusive publication and sale for fourteen years from the date of first publication. But, in order to get the benefit of the act, the work must be entered at Stationers' Hall in London, according to the regulations of that establishment. Action for asserting the privilege must be commenced three months from the time that the encroachment is discovered. The penalties are a forfeiture of the spurious copies, and one penny of fine for each sheet. After expiry of the first fourteen years, the right of publication returns to the authors, if alive, for another term of fourteen years. This act seems, by analogy, to include music.

The statute 8. of Geo. II. *cap.* 13, " for the encouragement of the arts of designing, engraving, and etching historical, and other prints, by vesting the properties thereof in the inventors and engravers, during the time therein mentioned," extends the provisions of this act 1709, just noticed, to *engravings*. The penalty for an infringement is a forfeiture of the spurious copies, and five shillings of fine for every sheet. The action must be brought within three months.

The act 12. of Geo. II. *cap.* 36, " for prohibiting

“ the importation of books reprinted abroad, and first  
“ composed or written and printed in Great Britain,  
“ and for repealing so much of an act made in the 8th  
“ year of the reign of her late Majesty Queen Anne,  
“ as empowers the limiting the price of books,” prohibits the importation of books that have been first printed in Britain, and afterwards reprinted and published abroad, unless twenty years have intervened between the time of first publication in this country and the date of importation. The penalty is L.5 for each offence, and double the value of the book imported. This act repeals a provision of the preceding statute 1709, by which power is given to certain functionaries to affix the prices on books. It was originally limited to seven years ; but afterwards continued by the acts 20. of Geo. II. *cap.* 47, and 27. of Geo. II. *cap.* 18,

The act 7. of Geo. III. *cap.* 38, was passed to explain and amend the 8. of Geo. II, relative to engravings. It provides specially for the case of Hogarth's works ; but afterwards declares, that the act shall apply generally to the case of all engravings from original designs of the engraver, or from drawings by other artists. Prosecution against offenders must be commenced within six kalendar months ; and the privilege is declared to endure for twenty-eight years.

The act 15. of Geo. III. *cap.* 53, “ for enabling the  
“ two universities in England, the four universities in  
“ Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copy-right in books given or bequeathed to the said  
“ universities and colleges, for the advancement of use-

“ ful learning, and other purposes of education ; and  
“ for amending so much of an act of the 8th of Queen  
“ Anne, as relates to the delivery of books to the ware-  
“ house-keeper of the Stationers’ Company, for the use  
“ of the several libraries therein mentioned,” requires,  
that the book so given or bequeathed to these institu-  
tions be printed at the university press, and regularly  
entered at Stationers’ Hall. The privilege ceases, if  
the copy-right be assigned by the legatees to indivi-  
duals.

The act 17. of Geo. III. *cap.* 57, “ for more effec-  
“ tually securing the property of prints to inventors and  
“ engravers, by enabling them to sue for and recover  
“ penalties in certain cases,” authorises the proprietors  
of engravings to seek damages in an action before a  
jury ; and finds them entitled to double costs of suit,  
if successful, against all who invade their right under  
the acts 8. Geo. II. and 7. Geo. III. above referred  
to.

The act 41. of Geo. III. *cap.* 107, “ for the further  
“ encouragement of learning in the united kingdom of  
“ Great Britain and Ireland, by securing the copies  
“ and copy-right of printed books to the authors of  
“ such books, or their assignees, for the time herein men-  
“ tioned,” allows the proprietor of a copy-right in books  
to pursue for damages before a jury, against all who en-  
croach on their privilege : And the offenders, in addi-  
tion to such damages as may be found due, shall for-  
feit the spurious sheets, and threepence for every sheet,  
one-half belonging to the King, and the other half to  
any person who shall prosecute for it. The act further

declares, that where the copy-right of a book has been bequeathed to Trinity College in Dublin, the privilege is perpetual, provided the book be printed at the press of that College, and regularly entered at Stationers' Hall. This act also renews the prohibition against importing such books as were originally printed in this country, and afterwards reprinted abroad ; the penalty is L.10, and double the value of the book imported. The prohibition, however, does not extend to books imported by individuals for private use, but only to such as are afterwards exposed for sale in Britain.

The act 54. Geo. III. *cap.* 156, " to amend the several acts for the encouragement of learning, by securing the copies and copy-right of printed books to the authors of such books, or their assignees," is in the following terms :

Be it enacted, That so much of the acts of the eighth year of Queen Anne, and of the forty-first year of his present Majesty, as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof to the warehouse-keeper of the said Company of Stationers, for the use of any of the libraries in the said act mentioned, and as requires the delivery of the said copies by the said warehouse-keeper for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies, shall be and the same is hereby repealed.

II. And be it further enacted, That eleven printed copies of the whole of every book, and of every volume thereof, upon the paper upon which the largest number or impression of such book shall be printed for sale, together with all maps and prints belonging thereto, which, from and after the

passing of this act, shall be printed and published, on demand thereof being made in writing to, or left at the place of abode of the publisher or publishers thereof, at any time within twelve months next after the publication thereof, under the hand of the warehouse-keeper of the Company of Stationers, or the Librarian or other person thereto authorised by the persons or body politic and corporate, proprietors or managers of the libraries following, *videlicet*, the British Museum, Sion College, the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Libraries of the four Universities of Scotland, Trinity College Library and the King's Inns Library, at Dublin, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively within one month after demand made thereof in writing as aforesaid, to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall, and he is hereby required to receive at the hall of the said Company, for the use of the library for which such demand shall be made, within such twelve months as aforesaid; and the said warehouse-keeper is hereby required, within one month after any such book or volume shall be so delivered to him as aforesaid, to deliver the same for the use of such library; and if any publisher, or the warehouse-keeper of the said Company of Stationers, shall not observe the directions of this act therein, that then he and they so making default in not delivering or receiving the said eleven copies as aforesaid, shall forfeit, besides the value of the said printed copies, the sum of five pounds for each copy not so delivered or received, together with the full costs of suit; the same to be recovered by the person or persons, or body politic or corporate, proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered



or received ; for which penalties and value such person or persons, body politic or corporate, is or are now hereby authorised to sue by action of debt or other proper action in any court of record in the united kingdom.

III. Provided always, and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries here before mentioned, of the second edition, or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations : And in case any edition after the first, of any book so demanded and delivered as aforesaid, shall contain any addition or alteration, no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only, printed in a uniform manner with the former edition of such book, be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid : Provided also, that the copy of every book that shall be demanded by the British Museum shall be delivered of the best paper on which such work shall be printed.

“ IV. And whereas, by the acts of the 8th year of Queen Anne, and the 41st year of his present Majesty's reign, it is enacted, That the author of any book or books, and the assignee or assigns of such author respectively, should have the sole liberty of printing and reprinting such book or books for the term of fourteen years, to commence from the day of first publishing the same, and no longer ; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years : And whereas it will afford further encouragement to literature, if the duration of such copy-right were extended in manner herein after mentioned ;” Be it further enacted, That from

and after the passing of this act, the author of any book or books, composed, and not printed and published, or which shall hereafter be composed, and be printed and published, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of the first publishing the same, and also, if the author shall be living at the end of that period, for the residue of his natural life; and that if any bookseller or printer, or other person whatsoever, in any part of the united kingdom of Great Britain and Ireland, in the isles of Man, Jersey or Guernsey, or in any other part of the British dominions, shall, from and after the passing of this act, within the terms and times granted and limited by this act, as aforesaid, print, reprint, or import, or shall cause to be printed, reprinted, or imported, any such book or books, without the consent of the author or authors, or other proprietor or proprietors of the copy-right of and in such book and books, first had and obtained in writing; or, knowing the same to be so printed, reprinted or imported, without such consent of such author or authors, or other proprietor or proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or shall have in his or their possession for sale, any such book or books, without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case, at the suit of the author or authors, or other proprietor or proprietors of the copy-right of such book or books so unlawfully printed, reprinted or imported, or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid, contrary to the true intent and meaning of this act; and every such author or authors, or other proprietor or proprietors, shall and may, by and in such special action upon the case, to be so brought against such offender or offenders, in any court of record in that part of the said united king-

dom, or of the British dominions, in which the offence shall be committed, recover such damages as the jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit; in which action no wager of law, essoin, privilege or protection, nor more than one imparlance shall be allowed; and all and every such offender and offenders shall forfeit such book or books, and all and every sheet being part of such book or books, and shall deliver the same to the author or authors, or other proprietor or proprietors of the copy-right of such book or books, upon order of any court of record in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors, or other proprietor or proprietors, to be made on motion or petition to the said court; and the said author or authors, or other proprietor or proprietors, shall forthwith damask, or make waste paper of the said book or books and sheet or sheets; and all and every such offender and offenders shall also forfeit the sum of threepence for every sheet thereof, either printed or printing, or published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same, in any such court of record, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, nor more than one imparlance shall be allowed: Provided always, That in Scotland such offender or offenders shall be liable to an action of damages in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in any such action where damages shall be awarded, double costs of suit or expenses of process shall be allowed.

V. And, in order to ascertain what books shall be from time to time published, be it enacted, That the publisher or

publishers of any and every book demandable under this act, which shall be published at any time after the passing of this act, shall, within one calendar month after the day on which any book or books respectively shall be first sold, published, advertised or offered for sale, within the bills of mortality, or within three calendar months if the said book shall be sold, published or advertised in any other part of the united kingdom, enter the title to the copy of every such book, and the name or names and place of abode of the publisher or publishers thereof, in the register-book of the Company of Stationers in London, in such manner as hath been usual with respect to books, the title whereof hath heretofore been entered in such register-book, and deliver one copy, on the best paper as aforesaid, for the use of the British Museum; which register-book shall at all times be kept at the hall of the said company; for every of which several entries the sum of two shillings shall be paid, and no more; which said register-book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehouse-keeper of the said Company of Stationers, and such warehouse-keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books, within the said calendar month, or three months as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds, together with eleven times the price at which such book shall be sold or advertised, to be recovered, together with full cost of suit, by the person or persons, body politic or corporate, authorised to sue, and who shall sue for the same, in any court of record in the united kingdom, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, nor more

than one imparlance, shall be allowed : Provided always, That in the case of magazines, reviews, or other periodical publications, it shall be sufficient to make such entry in the register-book of the said company, within one month next after the publication of the first number or volume of such magazine, review, or other periodical publication : Provided always, that no failure in making any such entry shall in any manner affect any copy-right, but shall only subject the person making default to the penalty aforesaid under this act.

VI. And be it further enacted, That the said warehouse-keeper of the Company of Stationers shall from time to time, and at all times, without any greater interval than three months, transmit to the librarian, or other person authorised on behalf of the libraries before mentioned, correct lists of all books entered in the books of the said company, and not contained in former lists ; and that on being required so to do by the said librarians, or other authorised person, or either of them, he shall call on the publisher or publishers of such books, for as many of the said copies as may have been demanded of them.

VII. Provided always, and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid, as shall be demanded on behalf of any of the said libraries, at such library, it shall and may be lawful for him to demand the same at such library, to the librarian or other person authorised to receive the same, (who is hereby required to receive and to give a receipt in writing for the same); and such delivery shall, to all intents and purposes of this act, be held as equivalent to a delivery to the said warehouse-keeper.

VIII. " And whereas it is reasonable that authors of books " already published, and who are now living, should also " have the benefit of the extension of copy-right;" be it further enacted, That if the author of any book or books which shall not have been published fourteen years at the time of

passing this act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author, and the assignee or assignees of such personal representative, shall have the sole right of printing and publishing the said book or books for the further term of fourteen years after the expiration of the first fourteen years : Provided, that nothing in this act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the first fourteen years, or the terms of any contract between such author and such assignee or assigns.

IX. And be it also further enacted, That if the author of any book or books which have been already published, shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall, for the remainder of his or her life, have the sole right of printing and publishing the same : Provided, that this shall not affect the right of the assignee or assigns of such author, to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the said twenty-eight years, or the terms of any contract between such author and such assignee or assigns.

X. Provided nevertheless, and be it further enacted, That all actions, suits, bills, indictments, or informations, for any offence that shall be committed against this act, shall be brought, sued, and commenced, within twelve months next after such offence committed, or else the same shall be void and of no effect.

The first maker of busts, models, casts, &c. has a right similar to the copy-right of an author, by the statute 38. of Geo. III. *cap.* 71, amended by 54. of Geo. III. *cap.* 56 ; and a similar protection is given, for the

period of three months, to the inventors of original patterns for printing linens, cottons, &c. by the act 54. of Geo. III. *cap.* 23.

Bell, I. 115.

#### DECISIONS.

Dodsley, 27. July 1775, Mor. App. 1. v. "*Literary property.*"—Cadell and Davies, 1. June 1804, *ib.* 4. *ib.*—Midwinter, 7. June 1748, *ib.* 8295.—Hinton, 28. July 1773, *ib.* 8307.—Tait, Brown's Sup. V. 508.—Murray, 25. June 1765, Mor. 8309.—Taylor and Skinner, 21. Dec. 1776, *ib.* 8308.—Constable and Co. 6. July 1824, S. & D. III. 216.

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#### COURT OF SESSION.

Prior to the institution of the College of Justice, the administration of justice in Scotland was regulated by the following statutes :

1425, *cap.* 69, by which judges were appointed to sit three times a-year.

1429, *cap.* 113-14-15-16-17 & 118, which describe the old form of summons, and rules for cautioners.

1457, *cap.* 61, which defines the power of the Lords in trying spoliations ; and,

1457, *cap.* 62, which describes the manner of bringing a cause before the Lords.

It is of course unnecessary to quote any of these obsolete acts.

The Court of Session was established in 1532, and the institution was ratified by Parliament 14th March

1540, in an act, *cap.* 93. of that year, whereby, and by 1542, *cap.* 2, power is given to the Judges to frame acts of sederunt for regulating the forms of procédure.

The acts 1537, *cap.* 37, and 1537, *cap.* 68, with all the intervening acts, relate to the ancient privileges of the Lords, the admission of advocates, and regulations for the other members of court.

The act 1579, *cap.* 93, regulating the form of admission of Lords of Session, is as follows :

For-sameikle, as it is heavilie murmured by divers lieges of this realme, that our Soveraine Lord electis and chusis zoung men, without gravitie, knowledge and experience, not havand sufficient living of their awin, upon the Session, and that sum of them be themselves, their wives, or servands, takis buddes, bribes, guddes and geir, swa that justice in effect is coft and sauld : For remeid quhairof, the Kingis Majestie, with advise of the three Estaites of this present Parliament, statutis and ordainis, That nane of the Lordes of Session alreddie received, or to be received, nouthur be themselves, or be their wives, or servands, take in ony times cumming bud, bribe, gudes or geir, fra quhat-sum-ever person or persones presently havand, or that hereafter sall happen to have ony actions or causes persewed before them, outhur fra the persewer or defender, under the paine of confiscation of all their movabil guddis, that dois in the contrair, the ane halfe thereof to be applyed to our Soveraine Lord, and the uthur halfe to the reveiler and tryer of the saidis bud-takeris : And farther decernis and ordainis the saidis bud-takeris to be displaced and deprived *simpliciter* of their offices, quhilk they beare in the Colledge of Justice, and to be declared infamous, and als to be punished in their persones, at the Kingis Majesties will : And sik-like our said Soveraine Lord, with advise foresaid, hes declaired and declaris, that in all



times cumming, quhen any ordinar place vakis in the Session, that our said Sovereine Lord sall present and nominate theirtō ane man that fearis God, of gude literature, practick, judgement, and understanding of the lawes, of gude fame, havand sufficient living of his awin, and quha can make gude expedition and dispatch of matters, tuitching the lieges of this realme, quha sall be first sufficientlie tryed and examine, be ane number of the saidis ordinar Lordes: And in case that persone presented be the Kingis Majestie be not founde sa qualified be them, as is befoir descried, our Sovereine Lord, with advise of his saidis three Estaites, declairis, that it sall be leasum to the saidis Lordes to refuse the persone presented to them, and the Kingis Majestie to present ane uther, sa oft as he pleasis, quhill the person presented be founden qualified, for using of the said place: And siklike our said Sovereine Lord, with advise foirsaid, hes declaired and declairis, that the President of the said Colledge of Justice sall be chosen be the haill senatoures theirow, of the conditions and qualities abone written, quhidder he be of the spiritual or temporal estaite: For chusing and electing of quhome, the Kingis Hienes, and Estaites foirsaidis, dispensis with that part of the first institution of the Colledge of Justice, beirand that the president suld be of the spiritual estaite, and ane prelate constitute in dignitie: And alswe declairis, that in absence of the chancellor and president now being, and that sall happin to be for the time, it sall be leasum to the saidis Lordes to elect and chuse ony ane of their number, quhome they think qualified and woorthiest, as said is, quha sall be called vice-president, for using of the said office, calling of matters, repeating of alledgeances proponed be the advocates at the barre, collecting of the Lordes votes, and pronounciation of their decreetes and interloquutoures, ay and quhill the returning of the saidis chancellor or president.

By 1584, *cap.* 133, it is declared that ministers cannot be members of the College of Justice.

The act 1592, *cap.* 132, "anent the jurisdiction "&c. of the Lords of Session," is as follows :

Because the nobilitie, erles, lords, and barronnes, auncient heritours of landes, livinges, and possessiones, understoode the institution of the College of Justice, and Lordes of Session, to have bene fra the beginning, for decision of all civill actiones ; unto the quhilk decision their haill heritages, livinges, landes and possessiones are subject ; and that his Hienes progenitours institute the said Colledge of cunning and wise men ; quhilk his Majestie willing to continew, according to his for-bearis gud intention ; and to foresee the corruption increasand in the said College, in this latter and declining age, declairis his Hienes minde be acte of Parliament : That in all times hereafter, quhen onie place suld vaik in the Session, that his Majesty suld present, and nominate thereto a man fearing God, of gud literature, practik, judgement and understanding of the lawes, of gud fame, having sufficient living of his awin, and quha could mak gud expedition and dispatch in matters tuitching the lieges of the realme : And zit that it is required, that his Hienes gude intention be mair speciallie expressed toward the complaint of cheising of zounge men, without gravitie, knowlege, and experience, upon the saide session, not having sufficient living of their awin :

Therefore our said Sovereine Lord, with advise of the Estaites of this present Parliament, declairis that nane sall be received to ane place of ane senator in the College of Justice, except he be sufficientlie tryed and knawin be his Hienes and haill Lordes of the Session : That the said person, to be presented and received, have in zeirle rent, properlie pertaining to himselfe, the summe of ane thousand markes usuall money of this realme, or els twentie chalders of victuall : and that his experience, qualitie, and conversa-

tion, may be the better tryed, that he be of the age of twenty-five zeires at the least compliet, in all time cumming, utherwise his presentation and admission to be null, annull- and all presentationes, given and granted be his Majestie, sen his Hienes coronation, to quhat-sum-ever person or persons, not beand of the age foresaid ; ratifiand neverthesse and apprievand alwaies all actes maid be his Majesties predecessours, and his Hienes selfe of before, upon the institution of the said College, and reformation of the abuses theirof.

The act 10. of Geo. I. *cap.* 18, “ for explaining the “ law concerning the trial and admission of the ordinary Lords of Session,” is as follows :

Whereas the nomination and appointment of the Lords of the Court of Session in Scotland, is an inherent prerogative of the Crown, and his Majesty is most desirous that none should be Lords of Session, but persons of known probity and understanding in the laws, and such as are duly qualified according to the several statutes for that purpose made; therefore, for the attaining of these good ends, and for the more plain and easie execution of the laws in this behalf already made : Be it enacted, &c. That when any ordinary place shall be vacant in the said Court of Session, the King’s Majesty, his heirs and successors, shall nominate and appoint thereto a person, qualified according to an act made in Scotland in the sixth Parliament of King James VI., (intituled, Anent the admission of the ordinary Lords of the Session, and reformation of certain abuses therein); and according to another act made in Scotland in the twelfth Parliament of King James VI. (intituled, Anent the jurisdiction, presentation, qualities, and age of the Lords of Session); and according to the articles of union of the two kingdoms of England and Scotland; and the qualifications of such person so nominated and appointed, may be examined, and shall be tried by the ordinary Lords of the Court of Session

only; and if the person so nominated shall on such examination be found duly qualified, according to the act and articles aforesaid, then they shall forthwith admit and receive him to such ordinary place; but if on such examination the said ordinary Lords of Session shall be of opinion, that there is just ground to object to the qualifications of the person nominated as aforesaid, in every such case the said Lords of Session are hereby required, with all convenient speed, to transmit and certify the whole matter to his Majesty, his heirs and successors, in order that the royal pleasure may be finally had thereupon; and if his Majesty, his heirs and successors, shall afterwards signify under the sign manual the royal will and pleasure, that the person so nominated shall be admitted and received into the said place, in such case the Lords of Session are hereby required forthwith to admit and receive him accordingly; but if his Majesty, his heirs and successors, after such examination as aforesaid, shall see cause sufficient not to admit the person so nominated, it shall and may be lawful for his Majesty, his heirs and successors, from time to time, to nominate some other person in manner aforesaid, still subject to such examination and final determination concerning the same, as is herein before enacted and declared.

And be it further enacted by the authority aforesaid, That whenever the places of the four present extraordinary Lords of Session, or the place or places of any one or more of them, at any time or times hereafter, shall become vacant, no presentation or nomination of any person or persons whatsoever shall be made by his Majesty, his heirs or successors, to supply such vacancy or vacancies; and if any such presentation or nomination shall at any time hereafter happen to be made, the same is hereby declared to be null and void; any thing to the contrary thereof contained in an act made in the fifth Parliament of King James V., concerning the authority of the Chancellor and Lords, or any other law or statute to the contrary thereof in any wise notwithstanding.

With regard to the privileges of the Judges, there are a great many statutes, especially fixing exemption from certain taxations. To this purpose are 1537, *cap.* 68,—1593, *cap.* 170,—1593, *cap.* 183,—1594, *cap.* 211,—1609, *cap.* 11,—1633, *cap.* 22,—1633, *cap.* 23,—1633, *cap.* 26,—1670, *cap.* 8,—and 1685, *cap.* 19. In particular, the act 1661, *cap.* 23, extends these exemptions to the other members of the College of Justice. The precise nature of the exemptions, and the description of the persons so privileged, are set forth in the act of sederunt 23d Feb. 1687, which is in the following terms :

The Lords of Council and Session having considered the summons of declarator, raised at the instance of the members of the Colledge of Justice, of their privileges, against the town of Edinburgh ;—the suspension raised by them, of the charges given at the instance of the town, for payment of the annuity, and the bill of suspension given in of the charges, for their proportions of his Majestie's supply ; the answer made thereto for the town, and whole dispute proposed for either party, with the acts of Parliament, and other acts and writes founded on, *hinc inde*, in the debate : They sustain the forsaid declarator, as to the members of the Colledge of Justice, their immunity and exemption from payment of the annuity for the ministers' stipends, and decerns and declares them free thereof, both as to bygones, and in time comeing, and suspends the letters *simpliciter* for the same : And likeways sustains the declarator, as to their immunity from watching and warding, and any impositions for the same, and from payment of any customes, calsey-mails, shoar-dues, and other impositiones, laid on their provisiones of meat and drink for their families, and their other goods carried to or from the town, and collected at the ports,

or other places within the liberties of the town : And declares, That the producing a certificate subscribed by a member of the Colledge of Justice, bearing, That the goods or provisiones do properly belong to him, shall be sufficient for freeing them from payment of the said customes and impositiones, the certificate being renewed once in the half year at least : And sustains the declarator, as to the pursuars exemption from the civil jurisdiction of the Magistrats of Edinburgh ; and declares, That upon their proponing declinator thereof, the Magistrats ought to desist from any procedure against them, without necessity of advocacion, and before answer : As to the criminall jurisdiction, and to that poynt of the declarator, concerneing the pursuars imploying unfreemen within the town, the Lords declare, They will take tryall what has been the former custome as to both these points, and particularly, what was done in the cases mentioned in the debate : And the Lords ordains, That where a taxation or cess is imposed by acts of Parliament, or convention of estates, to which the members of the Colledge of Justice are, or shall be lyable, that there be a speciall and distinct stent made upon the town and suburbs for the quota imposed, and so much more only as may defray the incident charges of collecting the same, wherein no exemption shall be given to the magistrates, stent-masters, or other persones, but that they be stented for their proportiones of these impositiones as well as other inhabitants : And likewise, that the tenements belonging to trades be stented, and the town's common good, where the same consists in land or few-duetys, and does not bear burden with the shyre, but prejudice to the town of Edinburgh, if they think fitt, to lay on the proportiones of these who have been in use to be exempted, upon their own neighbours, but not upon any members of the Colledge of Justice : And to the end these impositiones, warranted by publick authority, may be equally laid on, and these of the Colledge of Justice who are heritors, not burdened beyond their

just proportions, the Lords declares, That they will from time to time nominate one advocat, and one wryter to the signet, for each quarter of the town, to meet with the stent-masters, who shall be appoynted by the magistrates, at their taking of the survey and valuation of the whole tenements within the burgh and suburbs, and of the trade of the burgeses, which is in use to be stented, and to bear a part of the burden of the cess, and to be present at all their meetings for imposing of the stent, and to see that the valuation be justly and equally made, and the stent laid on accordingly: And for that effect, appoynts the magistrats to make intimation of the time of the stent-masters meeting, to the Lord President of the Session, the Dean of Faculty, and the Keeper of the Signet, ten days before in time of session, and twenty days in time of vaccance; and appoynts this method of stenting to begin and take effect for that term of his Majesty's supply, due and payable at Martinmas next 1687, but prejudice to the town of Edinburgh to use execution for that termes supply, which was payable at Martinmas last 1686, and the Whitsunday's term now ensueing, according to the stent already imposed for these two termes. And the Lords do declare the persones following to be members of the Colledge of Justice, who are to enjoy the priviledges above mentioned, viz. the Lords of Session, advocats, clarks of session, the clarks of the bills, the wryters to the signet, the deputs of the clarks of session, who serve in the Outter-House, and their substitutes for registrationes, being one in each clark's office, the three deputs of the clarks of the bills, the clarks of Exchequer, the directors of the Chancellary, their deput, and two clarks thereof, the wryter to the Privyseall, and his deput, the clarks of the generall registers of sasines and horneings, the macers of the session, the keeper of the minute-book, the keepers of the rolls of the Inner and Outer House. And the Lords do extend the priviledges foresaid to the persons following, viz. one actuall servant of

each Lord of the Session, one servant of each advocat, four extracters in each of the three clarks' offices of the Session, two servants employed by the clerk of register in keeping the publick registers, the keeper of the Session-house, and the keeper of the advocats library. It is always hereby declared, That if any of these servants, and others, to whom the foresaid priviledges are extended, shall keep merchant-shops, taverns or alehouses, or exercise any other trade within the burgh, they shall not enjoy any of the priviledges above mentioned. And ordains thir presents to be recorded in the books of sederunt, and to be printed.

There are various statutes on the subject of the duties of the judges, as well as their privileges.

The act 1693, *cap.* 26, declares, that the Lords shall decide with open doors.

The act 1594, *cap.* 216, declares,

Our Sovereine Lorde, and Estaites of this present Parliament, statutis and ordainis, That in time cumming, it sall not bee leistung to onie Lordes of the Session, ordinar or extraordinar, advocates, clerkes, writers, their servandes, or onie uther member of the College of Justice, or onie inferiour judgements within this realme, their deputes, clerkes, or advocates, directly or indirectly, be themselves, or onie utheris in their names, to their behoove or utilitie, to bye onie landes, teyndes, rowmes or possessiones, quhilkis ar dependand in controversie or question betuixt onie parties, or hes bene dependand, and not as zit decided ; quhilkis gif they, or onie of them do, and contraveenis the premises, the saidis Lordes of Session, advocates, clerkes, writers, their servandes, or onie uther member of the College of Justice, or onie inferiour judgements within this realme, their deputes, clerkes and advocates, sall amit and tine their office, place, and all priviledges and immunities bruiked, or that may be bruiked be them, be vertue thereof.



The act 1698, *cap.* 14, “ in favour of the Senators  
“ of the College of Justice,” is as follows :

The Estates of Parliament considering, that the Senators of the College of Justice are not at present competently provided ; do therefore make an humble offer to his Majesty of two several quarters of one month’s cess, payable in the manner, and at the terms after mentioned, to the Lords of Session, *viz.* One quarter of a month’s cess to be paid at the term of Whitsunday next to come, to be equally divided amongst the ordinary Lords of Session, the one half thereof for their service in November, December and January next, and the other half for their service in February, June and July thereafter, according as their present salaries are divided, and the other quarter of a month’s cess to be paid at the term of Whitsunday 1700 years, and to be divided in manner foresaid for their provision in the meantime, till the Parliament shall find out a fund for their better provision in all time coming. Likeas his Majesty, with advice and consent of the said Estates, appoints the said two quarters of a month’s cess to be uplifted by the collectors of supply, granted to his Majesty, by an act of this present session of Parliament, in the several shires and burghs of this kingdom, and the same execution to be used for ingathering thereof, as is appointed for his Majesty’s supply ; and that the several collectors foresaid pay in the same to the collector appointed, or to be appointed by the said Lords, for uplifting the other branches of their salaries, whose discharge, upon receipt thereof, in whole or in part, shall be a sufficient exoneration to the shires and burghs, and all other whom it effeirs. Likeas it is hereby provided, That no person shall be holden to produce their discharges of this cess after three years from the said respective terms of payment.

The 10th of Queen Anne, *cap.* 2, requires, that all

the members of the College of Justice take the oath of allegiance. It declares,

And be it further enacted by the authority aforesaid, That on or before the fifteenth day of June next, all advocates, writers to the signet, notaries publick, and other members of the College of Justice, within that part of her Majesties kingdom of Great Britain called Scotland, shall be and are hereby obliged to take and subscribe the oath appointed by the act of the sixth year of her Majesties reign, entitled, "An act for the better security of her Majesties person and government," before the Lords of Session of the aforesaid part of her Majesties kingdom; except such of the said persons who have already taken the same: And if any of the persons aforesaid do or shall neglect or refuse to take and subscribe the said oath, as aforesaid, such person shall be *ipso facto* adjudged incapable, and disabled in law to have, enjoy, or exercise in any manner his said employment or practice.

And be it further enacted by the authority aforesaid, That in all time coming, no person or persons shall be admitted to the employment of advocate, writer to the signet, notary publick, or any office belonging to the said College of Justice, until he or they have taken and subscribed the aforesaid oath, in manner as is above directed.

The 10th of Queen Anne, *cap.* 32, enlarges the time for ministers, advocates, and other members of the College of Justice in Scotland, to take the oaths therein mentioned. It is in the following terms:

Whereas by an act made in this present session of Parliament, (intituled, An act to prevent the disturbing those of the Episcopal communion, in that part of Great Britain called Scotland, in the exercise of their religious worship, and in the use of the liturgy of the Church of England; and

for repealing an act passed in the Parliament of Scotland, intituled, Act against irregular baptisms and marriages,) it is enacted, That all ministers of the Established Church in Scotland, and all and every person or persons who is or are pastor or pastors, minister or ministers of any Episcopal congregation in Scotland, shall be obliged, and are thereby required, on or before the first day of August next, to take and subscribe the oaths therein set forth, in such manner, and under such penalties, as all officers, civil and military, in Scotland, are obliged to take the oath recited in the fourteenth act of the sixth year of her Majesties reign, (intituled, An act for the better security of her Majesties person and government): And whereas, by the said last-mentioned act, it is, amongst other things, enacted, That all officers, civil and military, in that part of the kingdom of Great Britain called Scotland, who are obliged and required to take in Scotland an oath, called the oath of allegiance and assurance, before the Privy-Council there, should be obliged, on or before the 20th day of April 1708, to take and subscribe the oath by the said act appointed, before the Privy-Council, while it should continue, and after the determination thereof, before and in the Court of Session, or the Court of Justiciary, or the Court of Exchequer there; and that all others then in any of the offices aforesaid, who, in respect thereof, had used and been obliged to take the said oath of allegiance and assurance in any other court and place, should be obliged to take and subscribe the same at the next quarter-sessions of the peace that should be held for any county or place in which any such officer should be resident and abiding; and that all and every person or persons whatsoever, who should after be admitted into any office, civil or military, within that part of Great Britain called Scotland, should, within three months after his admittance into any such office, be obliged to take the oath appointed by the said act, in the respective courts

above mentioned, according to the distinction therein and above mentioned, for the persons then in office : And whereas many of the ministers of the Established Church, and Episcopal persuasion in Scotland, had not notice of the passing, the said act of this present session of Parliament, until after the last quarter-sessions of the peace, and that there will be no other quarter-sessions of the peace in Scotland before the second day of August next, whereby many of the said ministers and pastors are rendered incapable of taking the oaths by the said act required : For remedy whereof, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by authority of the same, That if any minister or ministers of the established church of Scotland, or any person or persons who is or are pastor or pastors, minister or ministers of any Episcopal congregation in Scotland, shall, on or before the first day of November, in the year of our Lord 1712, take and subscribe the oaths in the act of this present session of Parliament mentioned and set forth, in such manner as all officers, civil and military, in Scotland, are obliged to take the oaths recited in the said act made in the sixth year of her Majesties reign, the same shall be, to all intents, constructions, and purposes, as effectual as if such minister or ministers, pastor or pastors, had taken the said oaths within the time appointed by the act of this present session of Parliament.

And whereas, by another act made in this present session of Parliament, (intituled, An act for preserving the Protestant religion, by better securing the Church of England as by law established, and for confirming of the toleration granted to Protestant dissenters, by an act (intituled, An act for exempting their Majesties Protestant subjects, dissenting from the Church of England, from the penalties of certain laws; and for supplying the defects thereof; and for the

farther securing the Protestant succession, by requiring the practisers of the law in North Britain to take the oaths and subscribe the declaration therein mentioned,) it is enacted, That all advocates, writers to the signet, notaries publick, and other members of the College of Justice, within that part of Great Britain called Scotland, shall be obliged, on or before the fifteenth day of June, to take and subscribe before the Lords of Session, the oath appointed by an act made *anno sexto Regina*, (intituled, An act for the better security of her Majesties person and government); and in case of their neglect or refusal to take and subscribe the said oaths as aforesaid, such person shall be *ipso facto* incapable and disabled in law to have, enjoy, or exercise his said employment: And whereas the Court of Session in Scotland does not sit from the last of February to the first of June, and that several of the advocates, writers to the signet, notaries publick, and others, members of the College of Justice aforesaid, have either by reason of sickness, indisposition, or absence, been rendered incapable of taking the oath by the said act required: For remedy whereof, be it further enacted by the authority aforesaid, That if any advocate, writer to the signet, notary publick, or any members of the College of Justice aforesaid, shall, on or before the said first day of November, take and subscribe the aforesaid oath, either in her Majesties Court of Session, Justiciary, or Exchequer in Scotland, or at the quarter-sessions there, for the city or county where such person or persons inhabit or dwell, or in her Majesties Court of Chancery, Queen's-bench, Common-pleas, or Court of Exchequer at Westminster, the same shall be, to all intents and purposes, as effectual, as if such advocate, writer to the signet, notary publick, or other member of the College of Justice, had taken the same within the time, and in the manner appointed by the aforesaid act; anything therein contained to the contrary notwithstanding.

The act 10th of Queen Anne, *cap.* 13, repeals part

of an act passed in the Parliament of Scotland, entitled, "An act for discharging the Yule vacance."

Whereas by the twenty-second act passed in the Parliament of Scotland, *anno* 1690, (intituled, An act for discharging the Yule vacance,) the annual vacation of the Court of Session, and all other inferior courts of judicature, is thereby discharged, and the Senators of the College of Justice, or Court of Session, are ordained to meet and sit for the administration of justice, from the first day of November to the first of March yearly, without any interruption; which has been by experience found inconvenient and burdensome to the subject in that part of the kingdom; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That the said act, so far as the same relates to the discharging the Yule vacance, be and is hereby repealed, annulled, and made void, to all intents and purposes whatsoever.

And be it further enacted and declared by the authority aforesaid, That the Christmas vacation of the Session or College of Justice, and all other inferior courts of justice, in that part of Great Britain called Scotland, shall yearly and in all time coming continue and endure from the twentieth of December, to the tenth of January, both inclusive; the said law, or any other law or custom to the contrary notwithstanding.

The time of adjournment for the Christmas recess was formerly regulated by the acts 1686, *cap.* 5, and 1686, *cap.* 6. But it is now fixed by two statutes, 3d of Geo. II. *cap.* 32, which empowers the Judges to adjourn "on such day between the 15th day of December and 15th day of January yearly, and for such time "as they shall judge most convenient, not exceeding

“ the space of ten days ;” and 2d of Geo. III. *cap.* 27, which declares, “ that it shall and may be lawful “ for the Judges of the said Court of Session in Scot- “ land, and they are hereby empowered to make an ad- “ journment of the Session on such day, betwixt the “ 20th day of December and the 15th day of January “ yearly, and for such time as they shall judge expedi- “ ent, not exceeding the space of twenty days.” By the statute 30th of Geo. III. *cap.* 17, the summer ses- sion is appointed to begin on 12th May, and to end on 11th July yearly.

With regard to the form of procedure in the Supreme Court, the original acts, which are now superseded, were 1672, *cap.* 16,—1686, *cap.* 23,—1693, *cap.* 17, 18, 19, 21, and 34,—48. of Geo. III. *cap.* 151, “ concerning “ the administration of justice in Scotland,”—and 59. of Geo. III. *cap.* 45, “ to explain and amend certain “ acts relative to the Courts of Session in Scotland.”

All these enactments have been repealed ; and prac- tice is now regulated by the following statutes and re- lative acts of sederunt. The statute 1. and 2. of Geo. IV. *cap.* 38, “ for establishing regulations respecting cer- “ tain parts of the proceedings in the Court of Ses- “ sion, and in the Court of Commission for Teinds; and “ respecting the duties, qualifications, and emoluments “ of certain clerks and other officers of the said courts,” is as follows :

“ Whereas by a warrant under the sign manual of his “ Royal Highness the Prince Regent, acting in the name “ and behalf of his Majesty, dated the 8th day of February “ 1815, commissioners were appointed for inquiring into the “ duties, salaries and emoluments of the several officers,

“clerks and ministers of justice of the courts in Scotland, and for reporting what regulations might be fit to be established respecting the same; which commissioners have accordingly made certain reports, and the same have been laid before Parliament,” &c. : Be it enacted, That upon bills of advocacy and suspension, complaining of final judgments of sheriffs and other inferior judges, it shall hereafter be competent either for the Lord Ordinary on the Bills, or for the Court, to remit the cause to the inferior judge, with instructions how to proceed; but no such remit shall be made, except in the case of a suspension of a decret in absence, without hearing counsel, or receiving a written answer on the part of the respondent.

II. And be it enacted, That the procedure on bills of advocacy complaining of final decreets of removing, shall hereafter be the same as is now established for bills of suspension of such decreets.

III. And be it enacted, That in all cases in which, upon report of the Lord Ordinary on the Bills to the Lords of either Division, there shall be a difference of opinion, and an equality of voices, such Lord Ordinary on the Bills shall vote in the case, and in all other cases when, in consequence of such difference of opinion and equality of voices, the cause or matter shall be appointed to remain for subsequent discussion, if the question shall have previously depended before any Lord Ordinary of the same division, being at the time of such discussion one of the Permanent Ordinaries, such Lord Ordinary shall, without regard to any rotation, be called in to be present at the discussion, and to vote in the case.

IV. And be it enacted, That in case of the death, sickness, necessary absence, or legal declinature of the Lord Ordinary on the Bills during the period of the session, but at a time when the court is not actually sitting, any one of the Permanent Ordinaries, on a due statement by any of the



clerks of the bills of such fact, and of some urgency in the case, shall and may pronounce on any bill which may in such case be laid before him, such interlocutor as circumstances may require, without prejudice, *quoad ultra*, to the provisions of the act, passed in the fifty-third year of his said late Majesty's reign, and also without prejudice to the power of either division, upon legal declinature of the Lord Ordinary on the Bills, when represented to them in any case, to remit the same to another Ordinary in his stead.

V. And be it enacted, That it shall be competent and lawful for the Court in either division, in all cases when great avisandum is made with a process of reduction, instead of granting warrant to enrol the same in the next regulation roll, to remit to the fifth or junior Lord Ordinary for the time, to hear parties thereon, and to discuss the reasons of reduction and other conclusions of the libel, without prejudice to the power of the Court, on the ground of contingency, or any other sufficient cause, to make such remit to any of the Permanent Lords Ordinary; the Court is authorised and required to regulate, by act of sederunt, the time and manner of enrolling such processes of reduction so to be remitted to the fifth or junior Lord Ordinary, and of calling the same before the Lord Ordinary in pursuance of such remit.

VI. And be it enacted, That from and after the passing of this act, (with the exception hereafter specified), no person shall be capable to be appointed a principal clerk of the bills, except a principal clerk of session; and every person to be hereafter appointed to the said office shall personally discharge the duties thereof, in manner provided by the said act, passed in the fiftieth year of the reign of his late Majesty, and shall, in respect of such appointment, be entitled to the salary herein after provided, but to no fees or other emoluments whatsoever; provided always, that the two principal clerks of session, who shall be appointed principal

clerks of the bills, pursuant to this act, shall not belong to the same division of the Court at the same time, but one shall be appointed from each division.

VII. Provided also, and be it enacted, That nothing herein provided shall be so construed as to compel any of the present principal clerks of session to accept the said office of principal clerk of the bills; but every person to be hereafter appointed a principal clerk of session shall, in case of his being subsequently appointed to be one of the principal clerks of the bills, be bound to accept the said office and perform the duties thereof; and in case, at the time of any vacancy arising in the office of principal clerk of the bills, there shall be no principal clerk of session willing or bound to accept the same in terms of this act, it shall be lawful to his Majesty, his heirs and successors, in such case, to appoint a fit and proper person, legally qualified, to be appointed a principal clerk of session to fill the said vacancy.

VIII. And be it enacted, That from and after the time when, in terms of the regulations contained in the said act passed in the fiftieth year of the reign of his late Majesty, there shall be only two depute-clerks of the bills, each of whom would be entitled, by virtue of the said act, to draw one-sixth part of the total fees payable to the clerks of the bills, the several clerks of the bills shall be entitled thenceforth to receive, from the collector of the fee-fund, the annual salaries undermentioned, payable quarterly, viz. for every principal clerk of the bills, not being also a principal clerk of session, six hundred pounds; for every principal clerk of the bills, being also a principal clerk of session, three hundred pounds; and for each of the depute-clerks of the bills, four hundred and fifty pounds; and the said clerks shall be thereafter entitled to no fee or other emolument whatsoever, but the whole fees now legally exigible by the said clerks, shall thenceforth be paid over, on the first Monday of every month, to the collector of the fee-fund, conformably to an account thereof, to

be delivered to him, signed by one or other of the said depute-clerks, and to the verity of which the said depute-clerk shall make oath, if required.

Sections IX. and X. relate to the commission of teinds, and are quoted under that title.

“ XI. And whereas it is expedient to abolish the practice “ of directing brieves to the macers of the Court of Session “ in certain services;” be it enacted, That in all cases in which it is now lawful and competent to grant commission, by authority of the Court of Session, to the said macers for proceeding in any service, and in which the brief issued from Chancery is thereupon directed to the macers, such commission shall, from and after the twentieth day of June in this present year, be granted, and such brief issued, according to similar forms, to the sheriff-depute of Edinburgh or his substitute, or sheriff in that part specially constituted, whether such service may relate to lands and heritages situated in or beyond the sheriffdom of Edinburgh, or in several sheriffdoms ; and in all cases of competition of brieves, as well as where a party claiming right to appear and oppose a service shall make such appearance, either party may apply for and obtain advocacy of the brieves to the Court of Session, not only from any inferior judge, but also from the said sheriff of Edinburgh, acting under special commission ; and the Lord Ordinary, before whom the letters of advocacy shall be called, shall advocate the brief, and remit to the fifth, or junior permanent Lord Ordinary for the time, to be judge in the said service, without prejudice, nevertheless, to the power of the Court, whether on declinature or any other cause shewn, to remit to any other Ordinary to be judge in any service ; and every such service, whether before the Lord Ordinary on advocacy, or before the sheriff of Edinburgh on special commission, shall proceed, in the same place, form and manner, (unless in so far as the same may hereafter be otherwise regulated in manner herein after au-



thorised,) as services have heretofore proceeded before the macers, except that the said sheriff shall not be required to take any oath *de fidei administratione*, as in the case of the macers; and that the practice of applying to the court of assessors shall be, and is hereby abolished; and the Court of Session is hereby empowered, by any act or acts of sederunt, to make such rules and regulations as may be deemed expedient for altering and amending the form and manner of issuing of brieves and executing the same, and of conducting the procedure in such services; and for every such service, deduced before the said sheriff on commission, he shall be entitled to a fee of five guineas on every service in lands whereof the valued rent is upwards of two thousand pounds Scots, and in every service of a peer, and of two guineas in every other service.

XII. And be it enacted, That it shall not be lawful to any person to be clerk to any such service before the Lord Ordinary on advocacy, or before the sheriff of Edinburgh on commission, unless he be a writer to the signet; and the clerk to every service whatsoever of a retourable brieve shall, along with the verdict, deliver, or cause to be delivered into Chancery, to be preserved, subject to the orders of the Lord Clerk-Register, the original claim of service, minutes of the proceedings, and depositions of the witnesses; and no retour of any service shall be issued without such previous delivery.

“ XIII. And whereas expenses are occasionally incurred “ under the authority of the Court, in making up reports for “ the information, and by order of the Houses of Parliament, “ as well as in other matters connected with the administration of justice, for the payment of which no fund has been “ hitherto provided :” Be it enacted, That the net amount of all such charges shall, from time to time, be paid on the order of the Barons of Exchequer, on an account of the same being presented to them, certified under the signature of the

Lord President of the College of Justice, out of the moneys charged by certain acts made in the seventh and tenth years of the reign of her Majesty Queen Anne, with the fees, salaries and other charges allowed, or to be allowed, for keeping up the Courts of Session, Justiciary, and Exchequer.

“XIV. And whereas it is expedient that fixed salaries “should be paid to the keepers of the Inner-house rolls, “and the clerks of the Judges, instead of the fees now exigible by them; and also that certain allowances should be “granted for providing liferent annuities to them, payable “on the death or resignation of the Judges to whom they are “respectively attached;” be it enacted, That from and after the twentieth day of June in this present year, there shall be payable by the collector of the fee-fund, to the keepers of the Inner-house rolls, who are also clerks to the Lord President and Lord Justice-Clerk respectively, a salary of five hundred pounds Sterling each *per annum*, and to the clerks of the thirteen ordinary Judges, a salary of three hundred pounds Sterling each *per annum*, payable quarterly; and none of the said keepers or clerks shall thenceforth be entitled to any fee or other emolument whatsoever; but the whole fees now legally exigible by them shall be received by them respectively, and paid over, on the first Monday of every month, to the collector of the fee-fund, conformably to signed accounts to be delivered to him, and to the verity of which they shall make oath, if required by the accountant of the fee-fund: provided always that it shall be lawful to the Court, by any act or acts of sederunt, (which they are hereby empowered to make for that purpose,) to authorise and direct any other mode of collection of the said fees, or of any part thereof, which may be deemed more expedient, so as the whole of such fees may, in the most easy and convenient manner, be paid over to the collector of the said fund.

XV. And be it enacted, That from and after the twentieth day of June in this present year, an annual allowance

of one hundred pounds Sterling for each of the keepers of the Inner-house rolls, being as aforesaid also clerks of the Lord President and Lord Justice-Clerk respectively; and a like allowance of fifty pounds Sterling, for each of the clerks of the thirteen ordinary Judges, shall be paid by the said collector to such person or persons as shall be named and appointed to receive the same by the said Court, by their act or acts of sederunt, from time to time; which allowances, when so received, shall, under the authority of the Court, be invested for forming a fund for the purpose of providing eventual liferent annuities as aforesaid, and thereafter applied for the said purpose, all in such manner as shall be directed and enjoined by the said act or acts of sederunt, which the said Court is hereby authorised and required to make to that effect.

XVI. And be it enacted, That after the death or resignation of the present keeper of the Outer-house rolls, the duties of that office shall be performed by the clerks of the eight Judges who are not permanent Ordinaries, according to a weekly rotation to be established among them by the direction or with the approbation of the Court; and the fees now legally exigible by the said keeper shall thereafter be received by them each in his turn, and paid over weekly to the collector of the fee fund, to whom a printed copy of the rolls of the week shall, at the same time, be delivered for the satisfaction of the accountant; and the said collector shall, from time to time, thereafter defray the necessary expense of paper and printing for the said rolls, according to accounts thereof, to be duly certified by any two or more of the said clerks.

XVII. And be it enacted, That so much of the said act passed in the fiftieth year of his said late Majesty's reign, as provides that the six assistants of the principal clerks of session shall prepare the abridged forms of extracts therein directed to be observed, and as provides salaries to such

six assistants in respect of the preparation thereof, shall, from and after the 20th day of June in this present year, be repealed; and all extracts whatsoever which are now, in pursuance of the said recited act, prepared by the said assistants, shall thenceforth be prepared by one or other of the four extractors, to be appointed in manner hereafter directed, and their successors in office, and shall be authenticated by the signature of the extractors by whom the same shall have been prepared respectively, in the same manner and to the same effect as such extracts are now authenticated by the signature of a principal clerk of session; and the forms of extracts enjoined by the said act to be used shall be so far altered.

XVIII. And be it enacted, That the duplicates of all decreets for the record, and also all abbreviates of decreets of adjudication, which have been heretofore signed in compliance with the act of regulations, in the year 1695, by the Lord Ordinary pronouncing decree, as well as those abbreviates of decrees of adjudication which have been heretofore signed in compliance with any act of sederunt in the year 1793, by the principal clerks of session, shall, from and after the 20th day of June in this present year, be authenticated by the signature of the extractors respectively by whom the decreets shall be prepared and signed.

XIX. And be it enacted, That the nomination of each extractor shall be made by the said principal clerks jointly, the senior clerk having, in case of equality, a casting voice; and every such nomination shall be made without receiving therefor any price, gratuity or valuable consideration of any kind, and shall be forthwith reported to the Court; and the said extractors shall hold their offices during the pleasure of the said principal clerks, or the major part of them, the senior clerk having, as above directed, a casting voice in case of equality; and the said extractor shall give obedience to such regulations as may be made by the principal clerks of

session from time to time, for establishing and preserving order and regularity in the performance of their duties, and for the faithful performance of which duties the principal clerks of session shall be responsible ; and the said principal clerks shall be bound as heretofore to maintain and exercise a constant and regular superintendence, control and direction regarding the official conduct of the extractors, and all other subordinate officers in their department, and for that purpose at least one of them shall attend personally for such time as shall be necessary, at least three days in every week, in the Register-Office ; and the said principal clerks shall also prepare and deliver to the Lord Clerk-Register, or his deputy, at the commencement of every winter and summer session, a report, setting forth such matters as have occurred in the intermediate period relating to their department, and appearing to be worthy of notice, with a view to the public benefit.

XX. And be it enacted, That there shall be paid to each of the said extractors by the collector of the fee-fund, a salary of £. 250 Sterling *per annum*, and they shall not be entitled to any fee or other emolument whatever, except the ordinary charge for copying, paid for copying at the time in the Court of Session.

XXI. " And whereas, by the aforesaid act, passed in the 50th year of his said late Majesty's reign, specific compensations were provided for seventeen extractors whose offices were abolished, including in that number the six assistants of the principal clerks of session, being also extractors, but a deduction of two hundred pounds *per annum* was made from the amount of the compensations ascertained to be due to each of the said assistants, which deduction was made in consideration of their appointment to be preparers of extracts, with a salary to each of two hundred pounds : And whereas it is just and equitable, that when the said salaries are withdrawn, the corresponding deduction from



“ the compensation should cease to operate :” Be it therefore enacted, That an annuity of two hundred pounds Sterling shall, from and after the 20th day of June in this present year, be paid to each of the six persons now filling the joint office of clerks’ assistant and preparer of extracts, upon the order of the Barons of Exchequer, in the same manner and at the same time with the specific compensations allowed by the said act.

• XXII. And be enacted, That the keeper of the judicial records of the Court of Session, and the six assistants of the principal clerks of session for the time, shall, in virtue of their respective appointments, be members of the College of Justice.

“ XXIII. And whereas, by the said acts passed in the “ fiftieth and fifty-fifth years of his said late Majesty’s reign, “ certain regulations were made with regard to unextracted “ processes, which have not been found effectual ; and it is “ expedient that the Court of Session should be empowered “ to make a new regulation as to that matter, and also to “ provide for and to facilitate an arrangement of extracted “ decreets, according to the dates of the last interlocutor in “ the process ;” be it enacted, That the said Court shall be empowered, by act or acts of sederunt, from time to time to make such regulations with regard to the disposal and arrangement of processes remaining unextracted, whether final decree may or may not have been pronounced therein, as shall be deemed fit and expedient ; and to order and direct, if they shall see fit, that all extractable processes shall be extracted in such form and manner as may seem expedient, and to make provision for payment out of the fee fund of the charge, at the ordinary rate for copying, for making the record copy of such decreets as the parties may not require to be extracted ; and to make regulations with regard to the manner and the person by whom extracts of decreets shall be authenticated after the transmission of processes to the

keeper of the records, and also with regard to the manner and the person by whom extracts shall be authenticated, of all registered deeds and probative writings, charters, precepts and instruments whatsoever, issued after the transmission thereof to the General Register-House; all which orders and regulations shall be valid and effectual, any thing in the said two acts contained to the contrary notwithstanding: Provided always, That copies of all such acts of sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the commencement of the ensuing session, and no such act or acts of sederunt shall become in force or receive effect until the expiration of three calendar months after the first day of the meeting of such session of Parliament.

XXIV. And be it enacted, That from and after the passing of this act, the copies of printed papers and interlocutors and minutes of the Court, appointed by the said act passed in the fiftieth year of his said late Majesty's reign, to be received in evidence when an appeal is taken to the House of Lords, and the authenticated copies of proceedings in any cause which the assistants of the principal clerks of session are by the said act required to furnish, shall and may be certified by the signature either of one of the said clerks, or of one of the said assistants, for whom the principal clerk shall be responsible.

XXV. And be it enacted, That the fee payable to the said assistants, for comparing the said copies of printed papers, shall be fourpence for each printed page, and no more: Provided always, That the said fee shall in no one case, of whatever length the said copies may be, exceed ten pounds in the whole; and provided also, that the said fee is exclusive of the ordinary charge of copying interlocutors and minutes, according to the rate for copying paid at the time in the

Court of Session; and the fee payable to the said assistants, for preparing bonds granted by the purchasers of estates judicially sold for the prices thereof, shall be one-half of the fee which would be payable to a professional agent for similar bonds on occasion of a voluntary sale and no more.

XXVI. And be it enacted, That from and after the passing of this act, the principal and assistant keepers of the register of deeds, probative writings and instruments of protest, recorded in the books of Council and Session, shall be under the immediate control and direction of the Lord Clerk-Register and his deputy for the time, in the performance of the duties of their offices; and whenever a vacancy shall arise in any of the said offices, the same shall be supplied by the nomination of the Lord Clerk-Register, and every such nomination shall be forthwith reported to the Court; and the extracts or office copies of all such deeds, probative writings, instruments of protest, before the transmission thereof to the General Register-House, shall be authenticated by the subscription of one or other of the said keepers, in the same manner and to the same effect as such extracts have heretofore been authenticated by the signature of a principal clerk of session.

“ XXVII. And whereas it is expedient that the keepers  
“ of the several registers of records of seisins, reversions,  
“ abbreviates of adjudications, inhibitions and deeds, and  
“ probative writs recorded in the books of Council and Ses-  
“ sion, should form alphabetical indexes of the persons and  
“ matters to which these records relate, for the purposes of  
“ easy reference to the same respectively:” Be it enacted,  
That it shall and may be lawful for the Court of Session, by  
any act or acts of sederunt, from time to time to regulate the  
form and manner in which such indexes shall be formed and  
rendered accessible to the public, and to provide such remuneration for the persons who shall be employed to form  
the same, as may be just and suitable, by the imposition of a

fee on the registry of the writings to which the said indexes shall bear reference, not exceeding one-fourth part of the ordinary charge paid for copying at the time in the Court of Session: Provided always, That copies of all such acts of sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the commencement of the ensuing session; and no such act or acts of sederunt shall become in force or receive effect until the expiration of three calendar months after the first day of the meeting of such session of Parliament.

XXVIII. And be it enacted, That the fees upon services heretofore payable to the macers shall be abolished from and after the 20th day of June in this present year, and that the fees heretofore collected and accounted for to them, by the clerks of the bills and by the keeper of the Outer-House rolls, shall be thereafter accounted for, and paid over weekly, to the collector of the fee fund; and the said collector shall retain those fees which have heretofore been received by him on account of the macers, and paid by him to them, and the other fees now legally exigible by the said macers, or any of them, shall remain so exigible, and shall, along with all gratuities receivable by them, or any of them, in their capacity of macers, form a common fund of division among the whole seven macers of the court, including the one by hereditary right or his deputy, instead of being as heretofore exclusively divisible among four of their number; and the fee now legally exigible by the two macers of the Court of Teinds (being also macers of the Court of Session,) shall in like manner form a common fund of division among the whole seven macers, who shall all equally be liable to perform the duty of macers without distinction, whether in the Court of Session, Court of Teinds, or elsewhere; and the salaries now payable to the said macers, of ten pounds

each to four of their number, shall, from and after the said 20th day of June in this present year, cease and determine, and the said seven macers shall thereafter receive a salary of one hundred and twenty pounds each, payable in the same manner and at the same times in which salaries of one hundred and twenty pounds each are now paid and payable to three of their number; the salaries herein provided for them being in lieu and stead thereof.

XXIX. And be it enacted, That the remuneration of the collector of the fee fund, including the expense which may become necessary of a clerk or assistant, shall from and after the 20th day of June in this present year, be paid at the rate of four pounds *per centum* on the whole sums received by him, until such sums shall amount to eleven thousand pounds sterling in each year, with the addition of a rate of two pounds *per centum* on the further sums received by him in such year beyond eleven thousand pounds sterling, and that in lieu and stead of the remuneration fixed by the said act passed in the fiftieth year of his said late Majesty's reign: Provided always, that in case in any year the said remuneration at the rate aforesaid shall fall short of six hundred pounds, the said collector shall in such year be entitled to retain the full sum of six hundred pounds, as the allowance for his trouble and for the expense aforesaid; and every person filling the said office shall, in virtue of his appointment, be a member of the College of Justice.

XXX. And be it enacted, That any balance remaining in the hands of the collector, on the 20th day of December in any year, shall be disposed of in manner described by the said act, passed in the fiftieth year of his Majesty's reign; and in case of the insufficiency of the said fund at any time for the payment of the sums which the said collector is required to pay, the deficiency shall be supplied in the manner now practised in pursuance of the said act.

XXXI. And be it enacted, That in case it shall at any

time appear that the fees by which the said fund is created, produce annually a sum materially exceeding the amount required, it shall be competent to the said Court to diminish the amount of, or altogether to abolish any of the said fees; any thing in this or any other act to the contrary notwithstanding: Provided always, that if, by any diminution or abolition, the fund shall become insufficient for the legal demands upon it, the said Court shall restore the said fees in whole or in part, so as to keep the fund as nearly as may be equal to the burdens thereon; provided further, that a copy of every order or act of sederunt to be made by the said Court, diminishing the amount of said fees, or abolishing any of the same, or restoring such fees, shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a copy of the same to be laid before each House of Parliament, at or immediately after the commencement of the then next session thereof; and upon the expiration of three calendar months after the first day of such session, but not sooner, every such fee shall become diminished, or be abolished, or be restored, in the same manner as if the same had been diminished, or abolished, or restored, by authority of Parliament.

“ XXXII. And whereas the office of auditor of accounts “ in the Court of Session was established by acts of sederunt “ of the Lords of Council and Session, and the fees payable “ to and exigible by the auditor were afterwards regulated “ and established by the aforesaid act passed in the 50th year “ of the reign of his late Majesty, by which it was provided, “ That in the event of there being an auditor of each division, “ such fees should be equally divided between the two auditors; and whereas, the said office has been found useful and “ beneficial:” Be it therefore enacted, That the said office of auditor of accounts shall hereafter be, and remain a permanent office in the Court of Session, and the person at present

filling the said office shall continue to hold the same *ad vitam aut culpam*, with power nevertheless to his Majesty, his heirs and successors, to appoint another auditor of accounts, so that there may be an auditor of accounts for each division whenever it shall be certified to his Majesty, his heirs and successors, by the Lord President of the Court of Session, and the Lord Justice-Clerk, that in the opinion of the Court the due dispatch of the business of the said office shall require that there shall be two such auditors, every such auditor being a fit and proper person, who shall have practised for not less than three years as a writer to the signet, or as a member of the incorporation of solicitors before the supreme courts in Scotland; and every person filling the said office shall, in virtue of his appointment, be a member of the College of Justice, and shall hold the same *ad vitam aut culpam*; and that upon every vacancy in the said office, by death, resignation or otherwise, it shall be lawful to his Majesty, his heirs and successors, to nominate and appoint a fit and proper person, of the description aforesaid, to supply such vacancy; and no person holding the said office shall, under pain of deprivation of office, practise, either directly or indirectly, as an agent before the said Court of Session: Provided always, that in the event that two auditors of accounts shall be appointed, it shall and may be lawful for the Court of Session, and such Court is hereby empowered by an act or acts of sederunt, to regulate the manner in which the business of the said office shall be performed by the said two auditors, and the manner in which the fees granted by the said recited act shall be divided between them, any thing in the said recited act to the contrary notwithstanding: Provided further, that a copy of every such act of sederunt shall be transmitted by the President of the Court of Session to his Majesty's Secretary of State for the Home Department, who shall cause a copy thereof to be laid before each House of Parliament, at or immediately after the commencement of

the then next session ; and upon the expiration of three calendar months after the first day of such session, but not sooner, such act of sederunt shall become in force, in the same manner as if the regulations prescribed therein had been made by the authority of Parliament : Provided nevertheless, that in case the present auditor, or any auditor henceforth to be appointed, shall be unable to discharge the duties of the said office, by reason of temporary indisposition or absence, it shall and may be lawful for the said Court to appoint a fit and proper person, though continuing to practise as an agent before that Court, to discharge the duties of such auditor during the period of such temporary indisposition or absence.

XXXIIL. And be it enacted, That from and after the passing of this act, it shall not be lawful to extract any decree for the random sum of expenses concluded for in the summons ; and that in all cases in which decree is pronounced in absence of the defender or defenders, an account of expenses shall be lodged in process, and taxed by the auditor, and that a report thereon by the auditor shall be a sufficient warrant and authority to the extractor to fill up the amount of expenses, to be awarded against the defender or defenders, in the extracted decree, without the said report being brought under the consideration of the Lord Ordinary, unless by his own direction, or that of the auditor, or on the motion of any person interested ; and for the taxing of all such accounts, in cases of decree in absence, the auditor shall be entitled to charge a fee of five shillings and no more, when the amount of the account shall not exceed the sum of ten pounds Sterling ; and when the amount of the account shall exceed that sum, he shall be entitled to charge according to the rates of fees specified and contained in the schedule annexed to the aforesaid statute passed in the fiftieth year of the reign of his late Majesty.

XXXIV. And be it enacted, That if any of the keepers of the Inner-House rolls, or clerks of the Judges, or other



officers of Court, shall make application to the said Barons, and shall make it appear that he has suffered, or will suffer pecuniary loss from the operation or effect of any of the aforesaid regulations, beyond the salaries allowed and fees reserved by this act, due consideration being had of the circumstances of each individual case, the said Barons are hereby authorised and required to examine into such claims, and to decide whether any or what compensation is due to all or any of the said officers.

XXXV. And be it enacted, That every sum of compensation to be awarded under the authority of this act, shall be paid and payable upon the order of the said Barons, in such manner and at such time or times as they shall direct, free and clear from all taxes and deductions whatsoever, out of the moneys charged, or made chargeable by several acts made in the seventh and tenth years of the reign of her Majesty Queen Anne, with the fees, salaries and other charges allowed or to be allowed for keeping up the Courts of Session, Judiciary and Exchequer; and every order for compensation so made as aforesaid shall be laid before Parliament within one month after the commencement of the session next ensuing the making of the same: Provided always, that no such decision of the said Barons shall be final and conclusive until three months after a copy of the order of such Barons for compensation shall have been laid before Parliament.

The statute 4. of Geo. IV. *cap.* 85, was passed to empower "commissioners to be appointed by his Majesty, to inquire into the forms of process in the courts of law in Scotland, and the course of appeals from the Court of Session to the House of Lords."

And, lastly, the act 6. of Geo. IV. *cap.* 120, "for the better regulating of the forms of process in the courts of law in Scotland," is as follows:

Whereas it is expedient that certain alterations should be made in the forms of proceeding in the courts of law in Scotland, and sundry regulations established for the better expediting of business in those courts: And whereas certain acts were passed in the reign of his late Majesty, and in the reign of his present Majesty, concerning the administration of justice in Scotland, and appeals to the House of Lords; and for the better regulating of the Court of Session in Scotland; and for extending trial by jury to civil causes: And whereas an act was passed in the fourth year of the reign of his present Majesty, intituled, An act for empowering commissioners, to be appointed by his Majesty, to inquire into the forms of process in the courts of law in Scotland, and the course of appeals to the House of Lords: And whereas, pursuant to the said last-mentioned act, his Majesty did name and appoint by his royal sign manual certain persons to inquire into the forms of process in the courts of law in Scotland, and to report on sundry matters particularly therein set forth: And whereas the said commissioners so appointed have made a report to his Majesty upon the subject matter upon which they were so directed to report, which report has been laid before the two Houses of Parliament: And whereas it is expedient that the before-mentioned acts should in certain particulars be altered and amended, and that certain regulations should be established for the expediting of business before the courts of law in Scotland, and for extending trial by jury in civil causes, which cannot be effected without the authority of Parliament: Be it enacted, That from and after the eleventh day of November next to come, the seven junior ordinary Judges of the Court of Session shall be relieved from attendance in the Inner-House, and shall not sit therein, unless in so far as is herein-after provided, but shall act as Lords Ordinary in the Outer-House, to perform the business which by the subsisting acts and usages belong to the office of Lords Ordinary in the Outer-House; and the Lord President, and three of the se-

nior ordinary Judges of the Court of Session, shall form the Inner-House of the First Division, and the Lord Justice-Clerk, with the remaining senior ordinary Judges, shall form the Inner-House of the Second Division ; and the provisions of an act passed in the fiftieth year of the reign of his late Majesty, intituled, An act for abridging the forms of extracting decrees in the Court of Session in Scotland, and for the regulation of certain parts of the proceedings of that court ; and also of an act passed in the fifty-third year of the reign of his late Majesty, intituled, An act for the better regulating of the Court of Session in Scotland ; and also of an act of the first and second of his present Majesty's reign, intituled, An act for establishing certain regulations respecting certain parts of the proceedings of the Court of Session, in so far as the same may be found inconsistent with the regulations above expressed, shall be, and the same are hereby repealed : Provided always, that the Judges who now sit in the Inner-House of either division shall not be affected by this enactment, except with their own consent ; and therefore the number of Judges who are to form the Inner-House of either division, and of Lords Ordinary officiating in the Outer-House, shall remain as at present, until, either by the consent of the present Judges, or by new appointments of Judges, the enactment may be carried into effect.

II. And be it further enacted, That from and after the said eleventh day of November next, in all ordinary actions in the Court of Session, the pursuer or pursuers shall, in the summons, set forth in explicit terms the nature, extent, and grounds of the complaint or cause of action, and the conclusions which, according to the form of the particular action, the said pursuer or pursuers shall by the law and practice of Scotland be entitled to deduce therefrom ; and in like manner, the defender or defenders shall, in the defences, state in explicit terms every defence, both dilatory and per-

empty, on which he or they means or mean to rely, and shall in particular meet the statement of facts and the conclusions deduced from them in the pursuer's summons, either by denying the facts therein stated, or by admitting the same, and in answer setting forth in explicit terms the facts on which the said defender or defenders found, subjoining a summary of the pleas in law which are to be maintained by such defender or defenders.

III. And be it further enacted, by the authority aforesaid, That along with the summons and with the defence, the parties shall respectively produce the deeds or writings on which they respectively found, so far as the same are in their custody, or within their power.

IV. And be it further enacted, That in ordinary causes where the defender shall make appearance, and neither party shall abandon the cause, neither the Lord Ordinary officiating in the Outer-House, nor the Court, shall proceed to give judgment upon the merits in the cause, until the respective averments of the parties in fact, and their pleas in matter of law, shall, as herein-after directed, be set forth on the record, and the record made up and authenticated in manner herein-after appointed.

V. And be it further enacted, by the authority aforesaid, That it shall be the duty of the Lord Ordinary, at the first calling of the cause before him, to hear the parties on the dilatory defences, with power to reserve consideration on such dilatory defences as require probation, until the peremptory defences shall be pleaded, and the record adjusted in the manner herein-after directed; and if the Lord Ordinary shall sustain the dilatory defences, or any of them, to the effect of dismissing the action, he shall at the same time determine the matter of expenses; but if, on the contrary, the said Ordinary shall repel the dilatory defences, the cause shall then, with the exception herein-after to be mentioned, proceed in its due course of preparation, without any separate interlo-

cutor being pronounced respecting expenses, reserving this part of the expense to be disposed of along with the rest of the expense in the final decision of the cause; and the judgment of the Lord Ordinary on the dilatory defences shall be final, unless the pursuer, where the defences have been sustained, and the action dismissed, shall, within twenty-one days from and after the date of the Lord Ordinary's judgment, apply by a note in manner herein-after directed, to have such judgment reviewed by the Judges of the Inner-House, or unless, in the case where the Lord Ordinary shall have repelled the defences, the defender shall, at the time of pronouncing judgment as aforesaid, give notice of his intention to bring the judgment under review, in which case the Lord Ordinary, instead of proceeding with the preparation of the cause, shall forthwith give judgment for the expense of that preliminary discussion; and the defender shall then be entitled, at any time within twenty-one days from the date of the interlocutor, to apply by note to the Inner-House for a review of the Lord Ordinary's judgment; and if the defender shall not avail himself of the right thus to bring the judgment of the Lord Ordinary under review, an interim decree, with expense of extract, shall be allowed to go out for the expenses for which judgment shall have been given as aforesaid; and in reviewing the Lord Ordinary's judgment, and adhering to or altering the interlocutor by him pronounced, the Court shall also dispose of the matter of expenses relative to that preliminary discussion; and if the interlocutor of the Lord Ordinary repelling the defence shall be adhered to, an interim decree shall be pronounced for the expenses decerned for by him, with the additional expense in the Court, if such shall be allowed, on which interim decree execution may proceed; and it shall not be competent to appeal to the House of Lords against the interlocutory judgment, where the action is not dismissed, unless express leave be given by the Court, reserving the effect of the de-

fence if an appeal should afterwards be taken in the cause when finally decided.

VI. And be it further enacted, That where no dilatory defence shall have been stated, or in case all dilatory defences have been finally repelled, the Lord Ordinary shall proceed to examine into the correctness of the summons and of the peremptory defences; and if it shall appear to the Lord Ordinary, that the grounds of action, as set forth in the summons, are in terms not sufficiently positive and clear, or the conclusion not regularly or legally deduced according to the form and nature of the action, and the laws and practice of Scotland, he may either dismiss the action, decerning for expenses, and reserving to the pursuer the right to bring a new action, or order an amendment of the libel, and give interim decree against the pursuer for the expenses occasioned by the incorrect form of the summons; on which interim decree, if necessary, execution may proceed forthwith; and in like manner, if it shall appear to the Lord Ordinary that the defender has not set forth his peremptory defences or exceptions in terms sufficiently in point of fact, and with due correctness in point of law, the Lord Ordinary may order defences more satisfactory and correct to be given in, and give decree against the defender for the expense occasioned by his imperfect or evasive defences; and the expenses awarded in this preliminary adjustment of the summons and defences, when an amended summons or additional defences shall be ordered, shall, at lodging such amended summons or defences, be paid over to the clerk for behoof of the pursuer or of the defender, as the case may be, without which the amended summons or defences shall not be received; and the Lord Ordinary's determination, thus dismissing the action, or ordering an amendment of the libel, or more satisfactory defences, with expenses, shall be final, unless within twenty-one days from the date of the interlocutor application shall be made, as herein-after directed, to have the interlocutor reviewed by the Inner-House.

VII. And be it further enacted, That where the Lord Ordinary shall be satisfied that the summons and defences are in point of fact sufficiently explicit, and correctly deduced in point of law, and that no further disclosure of facts or of pleas is necessary for the due preparation of the cause for trial, he shall require the parties to state positively whether they are willing to hold the summons and defences as containing their full and final statement of facts, and pleas in law; and if they agree so to do, then the clerk shall set forth in a minute their assent to that effect, which shall be signed by the counsel on each side, and the record shall forthwith be completed as herein-after directed.

VIII. Provided always, and be it further enacted, That where the parties do not agree to hold the summons and defences as setting forth fully the facts and pleas respectively founded on; or where the Lord Ordinary shall think fit, he shall order the pursuer or defender, as the case may be, to give in, the one a condescendence, the other an answer or mutual condescendence, setting forth without argument the facts which they aver and offer to prove in support of the summons and defences; and in such condescendence, answers, or mutual condescendences, the parties shall, in substantive propositions, and under distinct heads or articles, set forth all facts and circumstances pertinent to the cause of action, or to the defence, and which they respectively allege and offer to prove; and along with such condescendence or answer, or mutual condescendences, the parties shall respectively produce all writings in their custody or within their power, not already produced, on which they mean to found.

IX. And be it further enacted, That as soon as the condescendences or condescendence and answers shall be lodged, the parties shall respectively revise their condescendences and answers, and make such alterations thereon as may appear to them to be necessary, in order fully to meet the

opposite averments; and in order that the averments of the parties may be finally adjusted with due regard to the matter of law to be maintained by them respectively, each of the parties shall, along with the copy of his revised condescendence or answer, lodge with the clerk, previous to the final adjustment of the record, a short and concise note, drawn and signed by counsel, of the pleas in law on which the action or defence is to be maintained; and in such notes the matter of law so to be stated shall be set forth in distinct and separate propositions, without argument, but accompanied by a reference to the authorities relied on.

X. And be it further enacted, That the parties shall appear before the Lord Ordinary, for the purpose of finally adjusting their respective averments in fact, and their notes of pleas, when it shall be the duty of the Lord Ordinary to hear the respective explanations of the parties, and to examine as before directed with the statement of the facts respectively, and of the pleas, as applicable to the summons and cause of action and to the defence, and to suggest any new plea which may to him appear necessary to exhaust the whole disputable matter in law or fact in the cause, after which the adjusted condescendences and answers and relatives notes of pleas shall be subscribed by the counsel for the parties; and before any order shall be pronounced, or judgment delivered, as to the disposal of the cause, the record of the pleadings as adjusted shall be authenticated by the Lord Ordinary by his signature; and the record so made up and authenticated shall be held as foreclosing the parties from the statement of any new averments in point of fact; and no amendment of the libel or new ground of defence shall be allowed after the record shall have been thus completed, under the exception hereafter to be mentioned; the pursuer having it in his power notwithstanding to abandon the cause on paying full expenses or costs to the defender, and to bring a new action if otherwise competent: Provided always,



that it shall be competent to either party in the course of a cause to state matter of fact *noviter veniens ad notitiam*, or emerging since the commencement of the action, if on cause shown leave shall be obtained from the Lord Ordinary or the Court so to do, the said party always paying, previous to stating such new matter on the record, such expenses as may be deemed reasonable by the Lord Ordinary or the Court; and if leave be granted, the new matter shall within a time to be limited be stated in the shape of a specific condescendence framed as above, accompanied by a note stating the plea in law arising therefrom; and the adverse party shall in such case be ordered within a reasonable time to put in his answer to such condescendence and plea, to be adjusted and made a part of the record as before directed.

XI. And be it further enacted, That the pleas stated on the record, and authenticated as before directed, shall be held as the sole grounds of action or of defence in point of law, and to which the future arguments of the parties shall be confined: Provided always, that where any new plea or ground in law shall, after the completion of the record as before, be in the course of the cause suggested, either by the Lord Ordinary or by the Judges in the Inner-House, or by the party, as fit to be discussed in relation to the facts already set forth, it shall and may be competent, with leave of the Lord Ordinary or of the Court, to add such plea to the note of pleas authenticated by the Lord Ordinary as before.

XII. And be it farther enacted, That the Lord Ordinary shall, in every instance, on due consideration of the circumstances, fix the time within which such condescendences and answers shall be lodged, and such time shall not be prorogated, except on payment of the expenses previously incurred, unless before the time so fixed special application shall be made for such prorogation, nor shall the prorogation in any instance be granted, except on cause shewn, nor oftener

than once; and if the party shall fail to lodge his condescendence or answers, as the case may be, within the time originally fixed, or afterwards prorogated, the Lord Ordinary may hold the summons or defences for such party as his condescendence or answers, finally fixing the averments in point of fact, on which he founds.

XIII. And be it further enacted, That after the record of the averments and pleas shall have been adjusted and closed as herein-before directed, and when it shall appear that the parties have respectively admitted on the record all the facts requisite to the decision of the cause, so as to render any trial of the facts unnecessary, the Lord Ordinary may proceed to decide the cause with or without further argument, or he may take the cause to report to the Inner-House in the form herein-after appointed.

XIV. And be it further enacted, That where the parties differ as to facts which do not require to be ascertained by jury trial, the Lord Ordinary shall give such orders and directions for the ascertainment of the facts as to him shall appear expedient, and his order for disposal of the cause shall be final, unless brought under review of the Inner-House in the form herein-after directed, within twenty-one days after such order is pronounced; and if so brought under review, the interlocutor of the Inner-House shall be final, without appeal, unless on leave expressly granted, reserving the effect of any objection to the course of proceeding in any final appeal on the merits of the cause.

XV. And be it further enacted, That where the parties differ as to facts which require to be ascertained by jury trial, the Lord Ordinary shall have it in his power either to remit the whole cause to the Jury Court for trial, or to send to that Court a particular issue or issues, in order to have such matter of fact ascertained, as he may deem necessary for deciding the cause; and the order by the Lord Ordinary, in so far as it thus remits a cause, shall be final.

XVI. And be it further enacted by the authority aforesaid, That where a cause is by means of admissions, or from the nature of the cause, deemed fit to be discussed and determined in the Court of Session, without having recourse to jury trial, or when the parties concur in desiring to have a question of law or of relevancy determined previous to trial by jury, or when it shall be finally ordered by the Lord Ordinary or the Inner-House, that any question of law or relevancy shall be determined previous to trial, or when the cause shall come back to the Court of Session with a verdict on a special issue sent for trial; in these, or any of these or the like cases, the Lord Ordinary may either proceed himself to decide the cause or matter to be determined, or take it to report to the Inner-House, as to him shall seem most expedient; and he may either order the parties to argue the whole or any part of the cause before him, as often as he may find it necessary, or direct cases in writing to be prepared by the parties in the form herein-after appointed, and to be seen, interchanged, and finally adjusted; and for compelling obedience to such order, the Court of Session are hereby required and enjoined to take effectual means, by regulations to be by them made, as herein-after directed; and after such cases shall have been so lodged, the parties shall have an opportunity of being further heard, if they or either of them shall desire it.

XVII. And be it further enacted, That on pronouncing judgment on the merits of the cause, the Lord Ordinary shall also determine the matter of expenses, so far as not already settled, either giving or refusing the same in whole or in part; and every interlocutor of the Lord Ordinary shall be final in the Outer-House, subject however to the review of the Inner-House, in manner herein-after directed.

XVIII. And be it further enacted, That when any interlocutor shall have been pronounced by the Lord Ordinary, either of the parties dissatisfied therewith shall be entitled

to apply for a review of it to the Inner-House of the Division to which the Lord Ordinary belongs; provided that such party shall, within twenty-one days from the date of the interlocutor, print and put into the boxes appointed for receiving the papers to be perused by the Judges, a note reciting the Lord Ordinary's interlocutor, and praying the Court to alter the same in whole or in part; and if the interlocutor of the Lord Ordinary shall have been pronounced on cases, the party applying for a review shall, along with the note, as above directed, print and put into the boxes the cases which have been before the Lord Ordinary; and if the interlocutor has been pronounced without cases, the party so applying shall, along with his note as above directed, put into the boxes printed copies of the record authenticated as before, and shall, at the same time, give notice of his application for review by delivery of six copies of the note to the known agent of the opposite party; and it shall in no case be competent for either party, from and after the said eleventh day of November, to bring any interlocutor of the Lord Ordinary under review of the Inner-House, by the form of reclaiming petition as now in use, but only in the mode thus directed; and the Inner-House shall have power, before proceeding to decide the cause (where cases have not already been ordered in the Outer-House,) to appoint parties to prepare and print cases in the form herein-after directed; and whether cases have been sent from the Outer-House, or ordered in the Inner-House, the Court shall allow counsel to be heard before giving judgment in the cause; and that in all causes before pronouncing judgment, it shall be in the power of the Court to order an argument by counsel, as often as they see fit, and on the whole or on such parts of the cause as shall seem to the Court to require further argument.

XIX. And be it further enacted by the authority aforesaid, That the Lord Ordinary may, after intimation to the

parties, report verbally to the Inner-House any incidental matter which may arise in the course of the cause, and such matter so reported by the Lord Ordinary shall be disposed of upon argument by counsel, unless the Court shall, when the matter comes before them, think fit to order cases; and if judgment shall be pronounced by the Court, or an order shall be made in respect to the matter so reported, that judgment or order shall be final, and the Court shall either settle the expense relative to the point so reported, or reserve consideration thereof to the end of the cause.

XX. And be it further enacted, That where the Lord Ordinary shall take the whole cause to report, he shall at the same time order the parties to prepare and lodge cases in the form to be herein-after directed, to be seen and interchanged; and the interlocutor so taking the cause to report, and the order for cases, shall be final; and when the cause shall come to be advised by the Court on cases prepared in consequence of such order, or on cases prepared by order of the Inner-House, the Court shall give to the counsel an opportunity of being heard before proceeding to judgment.

XXI. And be it further enacted, That the Inner-House shall, in deciding the cause, also determine the matter of expenses; and the judgment pronounced by the Inner-House shall in all causes be final in the Court of Session.

XXII. And be it further enacted, That wherever cases shall be ordered, whether by the Lord Ordinary or by the Inner-House, the case shall commence with a copy of the record, as authenticated by the Lord Ordinary; and each ground of law or plea, as stated in the record, shall be separately argued in the case.

XXIII. And be it further enacted, That in order to preserve uniformity in the decisions of the Court, and to settle doubtful questions of law which may arise, the Judges of either division may, in all causes in which the Judges of the Inner-House shall be equally divided in opinion, direct the

cause to be judged either by the Inner-House Judges of both divisions, or by the whole Court, including the Lords Ordinary ; and in such cases as it shall appear to them advisable to have any question occurring before them settled by the judgment of the whole Court, the Judges of either division may order that such matter shall be heard before the whole Judges ; and judgment shall in all causes be pronounced according to the opinion of the majority of the judges present ; and the interlocutor shall bear to be the judgment of the division before which the cause depends after consulting with the other Judges.

XXIV. And whereas, by an act of the forty-eighth year of his late Majesty, intituled, An act concerning the administration of justice in Scotland, and concerning appeals to the House of Lords, the Judges of either division are empowered to require the opinions of the other division, upon questions stated in writing ; be it enacted, That they may on such occasions also be entitled to require the opinion of the permanent Ordinaries ; and the judgment to be pronounced in the cause shall be according to the opinion of the majority of all the Judges so consulted, and shall bear that it is the judgment of the division before which the cause depends after consulting with the other Judges.

Sections XXV. and XXVI. are quoted in the title "*Appeal*."

XXVII. And whereas, according to the forms now observed in the Court of Session, there are certain classes of actions in which the forms of process and the mode of preparing and discussing the cause are different from those observed in the class of causes called ordinary causes ; but it is expedient that all classes of causes should, as nearly as may be, consistently with the nature and object of the action, be prepared for decision, and discussed according to the method and on the principles above laid down ; be it therefore enacted by the authority aforesaid, That all rescissory ac-

tions, except reductions of the decrees of the Court of Admiralty in maritime causes, shall, from and after the said eleventh day of November next, be enrolled and continue before the junior Lord Ordinary without being taken by avisandum to the Inner-House, and thence remitted for discussion; and before the Lord Ordinary the said actions shall, with such exceptions as the Judges under the powers hereinafter delegated to them shall think necessary, be prepared and discussed according to the form and method already directed with regard to ordinary actions, but without prejudice to the present forms of actions of reduction in other respects, and in regard to suspensions and reductions of decrees pronounced by the Court of Admiralty in maritime causes, notwithstanding the provisions of an act passed in the first and second year of his present Majesty, intituled, An act for the better regulation of the Court of Admiralty in Scotland; and in respect to all other actions, whether originating in the Outer-House or originating by petition, or by petition and complaint, or otherwise, in the Inner-House, the Court of Session are hereby required, under the powers hereafter expressed, to establish by act of sederunt such forms of process suited to those several causes as shall be most expedient and best adapted for preparing for decision such causes, and for duly separating the matters of fact from the matter of law involved therein, according to the principles and mode of proceeding above provided with regard to ordinary causes, and with power to the Court to order such causes to be prepared, discussed, and in the first instance determined in the Outer-House, or reported to the Inner-House, as may seem best calculated for the due investigation and decision of such causes.

From Section XXVIII. to Section XXXVIII. both inclusive, relate to the Jury Court, and are quoted in that title.

XXXIX. And whereas it will essentially contribute to the attainment of the objects proposed in this act, that in the

High Court of Admiralty, the Court of the Commissaries of Edinburgh, and inferior courts, forms of proceeding in the preparation of causes which have been before directed relative to causes in the Court of Session shall be followed as closely as may be done consistently with the peculiar nature of those several jurisdictions, and with the state of those courts in respect to the skill and legal knowledge of the procurators who attend and practise therein ; therefore, and in order to establish uniformity in the modes of proceeding in the said courts, and follow out the spirit of the present act, in so far as that may be done consistently with local circumstances, be it further enacted by the authority aforesaid, That the Judges of the Court of Session and Jury Court, as herein afterwards empowered, shall, and they are hereby required to make due inquiry, and thereupon to fix, by act of sederunt, such regulations, to be observed in the practice of the above courts, as may best be calculated to give effect to this act, and to forward the object herein proposed.

XL. And be it further enacted, That when in causes commenced in any of the courts of the sheriffs, or of the magistrates of burghs, or other inferior courts, matter of fact shall be disputed, and a proof shall be allowed and taken according to the present practice, the Court of Session shall, in reviewing the judgment proceeding on such proof, distinctly specify in their interlocutor the several facts material to the case, which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found, or on matter of law, and the several points of law which they mean to decide ; and the judgment on the cause thus pronounced shall be subject to appeal to the House of Lords, in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to the facts, be held to have the force and effect of a special verdict of a jury, finally and conclusively fixing the several facts specified in the interlocutor : Provided, however, that, except in consistorial causes, the Court of Session shall, in reviewing the sen-



tences of inferior judges, have power to send to the Jury Court such issue or issues to be tried by jury, as to them shall seem necessary for ascertaining facts which may not have been proved to their satisfaction by the evidence already taken, or which may have been omitted in the cause, the verdict to be returned to the Court of Session, to assist that Court in the determination of the cause; and the said Court shall also have power to remit the whole cause for trial to the Jury Court; and in neither of these cases shall it be necessary to have the consent of the parties to the cancelling of the depositions already taken in the cause before proceeding to jury trial, but the Court of Session shall have power to give such directions with regard to the proof already taken, or with regard to any part or parts thereof, as to them shall seem just; to which effect the provision in the foresaid act of the fifty-ninth year of his late Majesty, in so far as the consent of the parties to the cancelling of the depositions already taken is thereby required, shall be and the same is hereby repealed; and further, the Court of Session shall have power to remit the cause with instructions to the inferior court, if that course shall appear to them the most just and expedient in the circumstances of the case; but it is hereby expressly provided and declared, that in all cases originating in the inferior courts in which the claim is in amount above forty pounds, as soon as an order or interlocutor allowing a proof has been pronounced in the inferior courts, (unless it be an interlocutor allowing a proof to lie *in retentis*, or granting diligence for the recovery and production of papers,) it shall be competent to either of the parties, or who may conceive that the cause ought to be tried by jury, to remove the process into the Court of Session, by bill of advocation, which shall be passed at once without discussion and without caution; and in case no such bill of advocation shall be presented, and the parties shall proceed to proof under the interlocutor of the inferior court, they shall be held to have waived their right of appeal to

the House of Lords, against any judgment which may thereafter be pronounced by the Court of Session, in so far as by such judgment the several facts established by the proof shall be found or declared.

XLII. And be it further enacted by the authority aforesaid, That from and after the said eleventh day of November next, bills of advocation, complaining of final judgments of sheriffs and other inferior judges, shall contain a copy of the summons or petition by which the action may have commenced in the inferior court, and of the defences or answers, with the interlocutors pronounced, or such of them as the party shall complain of, and without any other narration, and without argument; and such bills of advocation shall at once be passed by the Lord Ordinary on the Bills, on caution being found to make payment of the expenses incurred in the inferior court, and also such expenses as may be incurred in the Court of Session, or on juratory caution for such expenses, in cases where such caution is by the present practice held sufficient.

XLIII. And be it further enacted by the authority aforesaid, That in all advocations of interlocutors pronounced by sheriffs, it shall be competent to the inferior judge to regulate in the meantime, on the application of either party, all matters regarding interim possession, having due regard to the manner in which the mutual interests of the parties may be affected in the final decision of the cause; and such interim order shall not be subject to review, except by the Lord Ordinary, or the Court, in the course of discussing the process of advocation; reserving to the Court of Session or Lord Ordinary full powers during the course of discussion of the cause in the said Court, to give such orders and directions in respect to interim possession as justice may require.

XLIII. And be it further enacted by the authority aforesaid, That in all actions before any inferior court, where a party shall intimate in writing to the clerk of court that he

intends to advocate the cause, and shall therewith lodge a bond of caution for such expenses as may be incurred in the Court of Session, as provided in this act, the space of fifteen days in the ordinary case, and thirty days in causes before the courts of Orkney and Shetland, shall be allowed after final judgment, to apply by bill of advocacy to the Court of Session, before extract shall be competent; but on the elapse of the foresaid terms respectively, if no bill of advocacy shall have been intimated to the clerk of court, he may give out the extract on the application of either party, it being competent however to present a bill of advocacy at any time before the decree has been actually extracted; and when decree has passed in absence in any inferior court, or in the Court of Admiralty, and has been extracted, it shall be competent to apply to the court in which such decree was pronounced, to have the decree recalled; and on consignment in the hands of the clerk of the court of the expense incurred, the said court shall have power to stop execution and repon the defender, and revive the action, as if decree had not been extracted.

XLIV. And be it further enacted by the authority as aforesaid, That when any judgment shall be pronounced by an inferior court, ordaining a tenant to remove from the possession of lands or houses, the tenant shall not be entitled to apply as above, by bill of advocacy to be passed at once, but only by means of suspension, as herein-after regulated.

XLV. And whereas, under the foresaid act passed in the fiftieth year of his late Majesty, bills of advocacy are admitted against interlocutory judgments in certain cases; be it further enacted, That when such bills of advocacy shall be passed, it shall not be necessary for the complainer to find caution, except for expenses, as in other cases of advocacy above mentioned; and all interlocutors by the Lord Ordinary on the Bills, passing or refusing such bills of advocacy, shall be final.

XLVL And be it enacted, That in all cases, without distinction, the Lord Ordinary on the Bills may pass bills of suspension, without requiring the concurrence of the Inner-House during Session, or of one or more Ordinaries during vacation ; and in complaining of any interlocutor pronounced by the Lord Ordinary on the Bills, the party shall proceed, not as at present by reclaiming petition, but by presenting a printed note to the Inner-House, stating the nature of the bill, reciting the interlocutor, and praying for an alteration thereof; and upon such note being presented, the Inner-House shall order the counsel for the parties to be heard, and on hearing them shall either grant or refuse the application, or appoint parties to give in mutual cases on the question ; and thereafter the Court shall either refuse the application, or remit to the Lord Ordinary to pass or to refuse the bill, or to remit to the inferior judge with instructions ; and any interlocutor of the Court refusing such application, or of the Lord Ordinary on a remit from the Court, shall be final ; and when a bill of suspension shall have been passed on a remit from the Inner-House, or in consequence of the Lord Ordinary having taken the cause to report to the Inner-House, the letters of suspension shall be discussed before a Lord Ordinary of that division, unless remitted *ob contingentiam* to some previous process depending before the other division ; and in the event of bills of suspension being passed of decrees of inferior courts, it shall be competent for the Lord Ordinary or the Court to find the suspender entitled to his expenses in the inferior court, as well as in the Court of Session.

XLVII. And be it also enacted, That cautioners in a bill of suspension shall be liable to fulfil the obligation in their bond, although the letters of suspension shall not be expedite before the day of citation appointed in the deliverance, and also in the case of the charger's obtaining and duly extracting protestation for not enrolling, calling, and insisting.

XLVIII. And be it further enacted, That the Lord Ordinary in the Outer-House, before whom any suspension or advocation shall come to be discussed, shall proceed in preparing the cause for judgment after the manner already directed as to causes in the Outer-House; and the party resisting the suspension shall be required, by way of defence in the Outer-House, to return answers to the reasons of suspension.

XLIX. And be it enacted, That in regard to actions depending in the Court of Session, in which any interlocutor shall have been pronounced before the eleventh day of November next, the regulations herein-before provided may be enforced, in so far as not inconsistent with the rules of court and forms of procedure now in force: Provided always, that in every such action, where the record shall be made up and completed in terms of this act, the provisions of this act, in so far as they apply to steps of process subsequent to the making up of the record, shall be enforced in all respects.

L. And in order to carry into further execution the provisions of this act, and the more effectually to accomplish the object of it; be it further enacted by the authority aforesaid, That from and after the passing of this act, the Court of Session, together with the Chief Commissioner of the Jury Court, assembled by the Lord President of the Court of Session, shall be, and they are hereby empowered and required accordingly to make such orders and regulations concerning the forms of process, and such arrangements in respect of attendance and hours of doing business, and generally for regulating the proceedings both of the Court of Session and of the Jury Court, as may most effectually carry into execution the purposes of this act, and remove any difficulties which may in the details of practice be found to arise in expediting the business before the said Courts, and of the Court of the Lords Commissioners for plantation of kirks and valuation of teinds, provided the same be not inconsistent with

the provisions of this act ; and the said Judges assembled as above shall also have power to make such regulations and arrangements in respect of the time and rotation of the business in the said Courts, and before Lords Ordinary, as may most effectually secure the due performance of the respective duties of the said Courts, and of the Judges thereof ; and the said Judges, assembled as before, shall have power, and are hereby required to make such regulations and orders relative to the forms of proceeding in the High Court of Admiralty, Court of the Commissaries of Edinburgh, and inferior courts, as may be best calculated to carry into execution the purposes of this act ; and it is hereby provided, that the said Judges assembled as above may meet for the above purposes during vacation, as well as during session, and that they may alter and amend such regulations from time to time.

LI. And be it further enacted by the authority aforesaid, That from and after the 11th day of November next, the subsisting forms of edictal citation, charge, publication, citation, and service at the market-cross of Edinburgh, pier and shore of Leith, as against persons forth of Scotland, shall cease and be discontinued ; and in lieu thereof, such edictal citations, charges, publications, citations, and services at the market-cross of Edinburgh, pier and shore of Leith, as against persons forth of Scotland, shall be done and performed by delivery of a copy thereof at the record office of the keeper of the records of the Court of Session, in the manner now practised in cases of citation or charge at the dwelling-house of a party not personally apprehended ; and the keeper of the records or his clerk shall forthwith register, in a book to be kept for that purpose, an abstract of the copy so delivered, exhibiting the time of service, of the nature of the writ, the names and designations of the parties, and the day against which the party shall be called upon to give obedience, or to make appearance ; and the keeper of

the said records shall keep three distinct and separate registers, one for all citations on summonses and orders of service, as against persons forth of Scotland, to appear before the several supreme civil courts respectively; another record for all citations by virtue of letters of supplement to persons forth of Scotland to appear before any of the inferior courts of Scotland; and a third for all charges, intimations, and publications to persons forth of Scotland, given by virtue of letters other than summonses passing the signet.

LII. And it is further provided and enacted, That the said abstracts, in so far as they comprehend citations by virtue of summonses, precepts, warrants of court, and letters of supplement, shall periodically be printed by the keeper of the said records; and this publication by means of printing shall commence at the distance of fourteen days from the said 11th day of November next, and shall regularly be continued at the end of each successive fourteen days; and at all times the said register of charges, citations, and publications shall be open to inspection, and the copies of charge, citation, and service, which shall be lodged as above with the keeper of the record or his clerk, shall be preserved during three years; and it shall be competent to the Court of Session to fix such allowance for the trouble and expense of the duty thus imposed on the keeper of the records, to be paid to him from the fee fund, as to the said Court shall seem reasonable.

LIII. And be it further enacted, That from and after the said 11th day of November next to come, the practice of citing defenders to appear on two diets of court shall in all cases cease, and all summonses shall thenceforward proceed on one diet only; viz. privileged summonses against defenders within Scotland on one diet of six days, other summonses against defenders residing in Orkney and Shetland, a diet of forty days, and for all other persons within Scotland, a diet of twenty-seven days, and for defenders out of Scotland,

a diet of sixty days; and it is hereby provided and declared, that where a person not having a dwelling-house in Scotland occupied by his family or servants shall have left his usual place of residence, and have been therefrom absent during the space of forty days without having left notice where he is to be found within Scotland, he shall be held to be absent from Scotland, and be charged or cited according to the forms herein prescribed accordingly.

Section LIV. relates to the Teind Court, and is quoted in the title *Commission of Teinds*.

LV. And be it enacted, That the provisions of this act, in so far as the same relate to the constitution of the Jury Court, shall continue and be in force from the 11th day of November next, until the 13th day of June in the year 1830, and from thence to the end of the then next session of Parliament.

LVI. And be it enacted, That it shall be lawful, and full power is hereby given to such persons as shall for that purpose, and at such time or times as his Majesty shall think fit to name and appoint them, be named and appointed by his Majesty, by letters patent, or any instrument in writing under his royal sign manual, or any three of them, to meet at and upon such place and day as in such letters patent or instrument shall be for that purpose named, or at and upon such place and day as they, or any three of them, giving notice to the others of them, shall appoint, and so thereafter as they or those present from time to time at meetings shall appoint, and to make all such inquiries as they shall be directed by his Majesty in instructions annexed to the said letters patent or instrument under the royal sign manual, into the forms of proceeding in trials of civil causes by jury in Scotland, and to report to his Majesty whether these forms of proceeding may be improved, and at what time and in what manner the union of the benefit of jury trial in civil causes with the jurisdiction of the Court of Session may be



best accomplished, and to set down in writing what shall appear to them to be material to be reported touching the matters aforesaid, with their opinions upon the same, together with the evidence or information which they may in the course of their inquiry receive.

LVII. And be it further enacted, That from and after the passing of this act, all questions and matters in Scotland relating to prize and capture in war, and the condemnation of ships and vessels as such, shall be vested solely in the High Court of Admiralty of England; and that the High Court of Admiralty of Scotland shall not in future exercise such jurisdiction, any law or practice to the contrary notwithstanding.

LVIII. And be it further enacted, That within fourteen days from the commencement of every future session of Parliament, there shall be transmitted to both Houses of Parliament copies of all acts of sederunt settling the rules of proceedings of the courts of Scotland, as fixed under the powers herein given.

There are three statutes of an earlier date for regulating some matters connected with the Court of Session: The act 50. of Geo. III. *cap.* 112, "for abridging the form of extracting decrees of the Court of Session in Scotland; and for the regulation of certain parts of the proceedings in that Court:" The act 53. of Geo. III. *cap.* 64, "for the better regulation of the Court of Session in Scotland:" And the act 55. of Geo. III. *cap.* 70, "for better regulating the formation and arrangement of the judicial and other records of the Court of Session in Scotland."

Before concluding this title, notice may be taken of those acts of Parliament which make provision for the salaries of the Judges. These were originally fixed by

the acts 1661, *cap.* 50. and 1662, *cap.* 7. They were afterwards augmented by the following statutes : 32. of Geo. II. *cap.* 35,—5. of Geo. III. *cap.* 47,—26. of Geo. III. *cap.* 46,—and 39. of Geo. III. *cap.* 110, amended by 39. and 40. of Geo. III. *cap.* 55, also by 48. Geo. III. *cap.* 145, which was passed “ for enabling “ his Majesty to grant annuities to the Judges of the “ Courts of Session, Justiciary and Exchequer in Scotland, on the resignation of their offices ;” and by 54. of Geo. III. *cap.* 94, the object of which was “ to grant “ additional annuities to Judges of the Courts of Session, &c. who had resigned their offices before the last “ augmentation of salaries granted to the Judges of “ these Courts.” The last augmentation was granted by 50. Geo. III. *cap.* 31.

## ACTS OF SEDERUNT.

The acts of sederunt connected with this title are as follow : A. S. 23. Feb. 1687, already quoted.—A. S. 21. Dec. 1649, giving an instance of the punishment of buying pleas.—A. S. 19. July 1671, and A. S. 19. Nov. 1684, exempting Lords of Session from the payment of cess.—A. S. 31. July 1674, as to the form of admission of the Lords of Session.—Parliamentary regulations 1695, § 5.-10, as to the oath to be taken by clerks of session.—A. S. 6. July 1748, and A. S. 12. Nov. 1760, as to the oath to be taken by all members practising before the Court.—A. S. 12. May 1790, fixing the vacation, and the time for holding the summer session.—A. S. 24. Feb. 1810, report to Parliament relative to acts of sederunt.

The meetings of the Court are regulated by three acts of

sederunt; 20. Oct. & 11. Nov. 1808, with reference to the statute 48. of Geo. III. *cap.* 151, and A. S. 11. July 1800.

A. S. 16. June 1819, relative to the poor's roll.—A. S. 25. Feb. 1824, in reference to 1. and 2. of Geo. IV. *cap.* 38, A. S. 12. Nov. 1825, in reference to 6. of Geo. IV. *cap.* 120, to regulate the form of process.—Supplementary A. S. 14. Feb. 1826, and A. S. 11. July 1826, as to reclaiming notes.—A. S. 11. July 1826, as to ingiving of papers.—Acts of same date as to calling of summonses.—A. S. 15. Dec. 1826, for regulating the business of the Outer-House.—A. S. 16. Jan. 1827, for furnishing the Lords Ordinary with a copy of the closed record.—A. S. 11. July 1827, relative to appendices to reclaiming notes in suspensions and advocations.

Dict. *voce* Jurisdiction, Div. IV.

#### DECISIONS.

Earl Bothwell v. Maitland, Dec. 1582, Mor. 2399.—Lord Traquair v. Lady Newbattle, 7. June 1593, *ib.*—Sands v. Lady Lothian, 23. Feb. 1610, 2400.—Melville v. Livingston, 9. March 1610, *ib.*—Hamilton, 27. June 1611, *ib.*—Nairn v. Laird of Fordel, 16. July 1628, Sup. I. 268.—Town of Edinburgh v. College of Justice, 20. Nov. 1678, Sup. III. 257, and 23. Feb. 1687, Dict. 2402, and Sup. III. 616.—Muir v. Maxwell, 24. June 1675, 2401.—Fairholm v. Daes, 16. July 1687, 2412.—Lords of Session v. Town of Edinburgh, 1. Nov. 1693, Sup. IV. 167.—Stirling, 28. Feb. 1699, *ib.* 443.—Anstruther v. Gordon, 11. Jan. 1710, 2414.—Prestongrange v. Bennet & Inglis, 3. Dec. 1695, 2413.—Douglas v. Colvil's Representatives, 28. Dec. 1699, 2414.—Temple v. Cuninghame, 2. July 1708, *ib.*—Carruthers v. Sinclair, 26. Jan. 1712, 2415.—Halden, 4. Feb. 1722-3.—Robertson, 422.—Goldie, 25. July 1751, Elch. No. 56, v. *Jurisdiction*.—Christian v

Syme, 16. June 1779, 2416.—Magistrates of Edinburgh, v. Faculty of Advocates, 29. Jan. 1788, 2418, affirmed on appeal.—Marshall v. Youngson, 23. May 1798, 2425.—Society of S. S. C. v. Keeper, &c. of the Signet, 25. Feb. 1800, Mor. App. *h. t.*—Laidlaw v. Wylde, 9. June 1801, *ib.* No. 4. *voce* “*Arrestment.*”—Writers to the Signet v. Gardner, 21. June 1814.—Jamieson, 21. Feb. 1815.

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### COMMISSION OF TEINDS.

Originally this branch of judicature was entrusted to special commissioners. The dates of the commissions are 1617, *cap.* 3,—1621, *cap.* 5,—1633, *cap.* 17,—1661, *cap.* 61,—1662, *cap.* 9,—1663, *cap.* 28,—1672, *cap.* 15,—1685, *cap.* 28,—1686, *cap.* 22,—1693, *cap.* 23,—and 1695, *cap.* 18. But since the Union, this duty has been performed by the Judges of the Court of Session.

The act 1707, *cap.* 9, appoints the Lords of Session commissioners for teinds, in place of the special commissioners above referred to; and, in particular, it empowers their Lordships “to determine in all valuations “and sales of teinds, to grant augmentations of ministers’ stipends, prorogations of tacks of teinds, to “disjoin too large parishes, to erect and build new “churches, to annex and dismember churches, as they “shall think fit, conform to the rules laid down and “powers granted by the 19th act of the Parliament “1633,—the 23d and 30th acts of the Parliament “1690,—and the 24th act of the Parliament 1693,—

“ in so far as the same stand unrepealed ; the transport-  
 “ ing of kirks, disjoining of too large parishes, or erect-  
 “ ing and building of new kirks, being always with the  
 “ consent of the heritors of three parts of four at least  
 “ of the valuation of the parish whereof the kirk is  
 “ craved to be transported, or the parish to be disjoin-  
 “ ed, and new kirks to be erected and built, the minis-  
 “ ter in the meantime to serve the cure in the present  
 “ kirk of the parish.”

The act 48. of Geo. III. *cap.* 138, entitled, An  
 “ act for defining and regulating the powers of the  
 “ Commission of Teinds, in augmenting and modifying  
 “ the stipends of the clergy of Scotland,” is in these  
 terms :

I. Whereas, by an act of the Parliament of Scotland, in  
 the year 1707, intituled, “ Act anent plantation of kirks  
 “ and valuation of teinds, her Majesty Queen Anne, and the  
 “ Estates of Parliament, empowered, authorised, and ap-  
 “ pointed the Lords of Council and Session to judge, cog-  
 “ nosce, and determine, in all affairs and causes which by  
 “ the laws and acts of the Parliament of Scotland had been  
 “ referred, and did pertain and belong to the jurisdiction  
 “ and cognisance of commissioners formerly appointed for  
 “ that effect, as fully and freely in all respects as the said  
 “ Lords did or might do in other civil causes; and certain  
 “ powers therein mentioned were particularly granted by the  
 “ said act; and it was thereby declared that the said act and  
 “ commission should be subject nevertheless to such regula-  
 “ tions and alterations as should be made by the Parliament  
 “ of Great Britain; And whereas it is expedient, that the  
 “ power of the said Lords of Council and Session, as com-  
 “ missioners aforesaid, should, in some respects, be defined

“and regulated :” May it therefore please your Majesty that it may be enacted, and be it enacted, &c. That from and after the passing of this act, it shall not be competent to the said Lords of Council and Session, as commissioners aforesaid, except as after mentioned, to augment or modify any stipend which shall have been augmented or modified prior to the passing of this act, until the expiration of fifteen years from and after the date of the last final decreet of modification of such stipend.

II. And be it enacted, That no stipend which shall be augmented or modified by a decree after the passing of this act, shall be again augmented or modified until the expiration of twenty years from and after the date of such decree or modification thereof; nor shall any such stipend be augmented or modified at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

III. Provided always, and be it enacted, That in all processes of augmentation or modification in which the days of comparence had elapsed, and which shall have been called in Court prior to the twelfth day of March 1808, and which shall continue to depend before the said Lords of Council and Session, as commissioners aforesaid, at or after the passing of this act, it shall be competent to the pursuer, either to suspend the same until fifteen years shall have elapsed from the date of the last preceding decree of modification, or to prosecute the same to a conclusion forthwith; and that it shall be competent to the said Lords of Council and Session, as commissioners foresaid, either to grant, or refuse to grant an augmentation in any such cases, or to pronounce, or to refuse to pronounce a decreet of modification therein; provided always, that if the stipend in any such depending case shall be augmented or modified by a decreet after the passing of this act, the same shall not be again augmented or modified until the expiration of twenty

years from and after the date of the last decree of modification thereof respectively.

IV. Provided further, and be it enacted, That this act shall not be deemed, or taken to extend to any case where a decret of modification having been pronounced by the said Lords of Council and Session, as commissioners aforesaid, prior to the passing of this act, the subject-matter whereof shall be depending either upon petition to the said commissioner, or upon appeal to the House of Lords at the time of the passing thereof, or where it may be competent to present such petition, or such appeal against any such decree of modification; but every such case may be proceeded in and brought to a conclusion; and a petition or petitions may be presented to the said commissioners therein, or an appeal may be taken to the House of Lords as heretofore, and the same may be prosecuted with regard to said petition or appeal in the same manner as if this act had not been made.

V. Provided always, and be it enacted, That in such cases aforesaid, where there shall be a final decret of modification, no such stipend shall be again augmented or modified until the expiration of fifteen years from and after the date of the final decret of modification thereof, pronounced by the said Lords of Council and Session, as commissioners aforesaid.

VI. Provided likewise, and be it enacted, That where such stipend shall, at or after the expiration of the said fifteen years, be again augmented or modified by a decret after the passing of this act, it shall not be again augmented or modified until the expiration of twenty years from and after the date of such decree of modification thereof; nor shall any such stipend be augmented or modified, at any future period, until the expiration of twenty years from and after the date of the last decree of modification thereof respectively.

VII. Provided further, and be it enacted, That in all cases

whatsoever where an augmentation or modification of stipend shall have been or shall be applied for, and which shall be judged of, or a decision pronounced therein, after the passing of this act, by the said Lords of Council and Session, as commissioners aforesaid, it shall and may be competent to them to refuse to augment or modify any stipend in any such case, either on account of there being no legal fund of augmentation, or on account of the circumstances of the case; and it shall and may be competent for any party or parties to propone all relevant objections in every case whatsoever, when an augmentation or modification shall be applied for, and which objections shall be determined by the said Lords of Council and Session, as commissioners aforesaid, as heretofore.

VIII. And be it further enacted, That every stipend which shall be augmented after the passing of this act shall be wholly modified in grain or victual, even although part of the whole thereof shall have been previously modified in money, or although part of the whole of the teinds shall be money teind, unless where it shall appear necessary, on account of the state of the teinds, or on account of the interest of the benefice, or on account of the nature of the articles other than grain or victual which have been in use to be delivered in kind as stipend, that a part of the said stipend should be modified not in grain or victual but in money, or should be modified in such other articles as have been in use to be delivered in kind as stipend.

IX. And be it further enacted, That in the case of every decree of modification which shall be pronounced after the passing of this act as aforesaid, it shall and may be competent to the said Lords of Council and Session, as commissioners aforesaid, and they are hereby authorised and required, to convert the said money stipend or money teind into grain or victual, save and except as aforesaid; and to make such conversion into grain or victual, according to the fiar



prices of the kind or description of grain or victual into which the same shall be converted, as appearing from the fiars of the county or stewartry struck for each year, in virtue of authority from the sheriff or stewart in which the parish shall be situated, upon an average of such fiar prices for seven years preceding the date of the decret of modification, and exclusive of that year in which such decret of modification shall bear date.

X. Provided always, and be it enacted, That where such parish shall not be altogether situated in the same county or stewartry, or where no fiars applicable to the kind or description of grain modified shall be struck in the county or stewartry wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as commissioners aforesaid, to convert the said money into grain or victual, according to the average of the aforesaid seven years of the fiar prices of two or more of the adjoining counties, or of such stewartry, county or counties, as they shall deem most suitable in the circumstances of the case.

XI. And be it further enacted, That it shall not be competent for the Lords of Council and Session, as commissioners aforesaid, where a stipend shall, after the passing of this act, be modified in grain or victual in whole or in part, to authorise the minister to receive the same, or any part thereof in kind, but that it shall only be competent for them to decree the value thereof to be paid, or for him to receive the same in money, according to the fiar prices of the kind or description of grain or victual into which the same shall have been modified, as appearing from the annual fiars of the county or stewartry, in which the parish, the stipend of which shall have been so modified, shall be situated, struck in virtue of authority from the sheriff or stewart for that crop or year for which such stipend, modified in grain or victual, shall be payable.

XII. Provided always, and be it enacted, That where any such parish shall not be altogether situated in one and the

same county or stewartry, or where no annual fiars applicable to the kind or description of grain or victual modified shall be struck in the county or stewartry wherein such parish is situated, it shall be competent for the said Lords of Council and Session, as commissioners aforesaid, to fix upon and specify two or more of the adjoining counties, or such stewartry, county or counties, as they shall deem most suitable in the circumstances of the case, according to the annual fiar prices of which stewartry, county or counties, they shall decree the value thereof to be paid in money.

XIII. Provided always, and be it enacted, That where there shall have been or shall be different rates of annual fiar prices for any county or stewartry, district or place, struck in virtue of authority from the sheriff or steward, the said conversion from money into grain or victual, and from grain or victual into money, in all of the cases aforesaid, shall be made according to the highest annual fiar prices struck in virtue of authority from the sheriff or steward for the said county, stewartry, district or place.

XIV. Provided always, and be it enacted, That the right of any heritor to surrender his valued teind, in place of subjecting his lands to the amount of the stipend localled upon them, shall not be taken away by what is herein enacted.

XV. And be it further enacted, That from and after the passing of this act, the said Lords of Council and Session, as commissioners aforesaid, nine being a quorum, instead of meeting in the afternoon of each Wednesday as heretofore, shall meet at ten of the clock in the forenoon, upon the second Wednesday which shall happen after the Court of Session shall have met for the dispatch of business in the months of November and May in every year respectively, and at the same hour once a fortnight on Wednesday during the sitting of the Court of Session, and at such other times and on such other days in the months of December, January and March,

not being any of the days upon which the Court of Session meet for the dispatch of the business of the said Court, as the said Lords of Council and Session, as commissioners aforesaid, shall find necessary or proper for executing the powers committed to them by this, and the said in part recited act.

XVI. And be it enacted, That it shall be lawful for the said Lords of Council and Session, as commissioners aforesaid, and they are hereby empowered and required to establish rules and regulations for abridging the forms and expense of citation of heritors and others, and for ascertaining the facts and circumstances of the case, and to establish regulations for executing the business committed to them by the said in part recited act of the Parliament of Scotland, and by the present act, with as much expedition and as little expense as possible.

“XVII. And in order to guard against collusion, and also in order that no processes of augmentation or modification of stipends shall be raised on the ground of alleged collusion,” be it further enacted, That every minister, insisting in the process of augmentation, shall, after the passing of this act, besides citing the heritors, also cite the moderator and clerk of the presbytery of the bounds, and furnish them with a statement of the amount of his present stipend, and the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge it proper, may appear as parties to the process; and, in the event of the presbytery entering no appearance, the minister shall forthwith transmit to the moderator or clerk of the presbytery a certified copy of the interlocutor pronounced by the Court; and that it shall be competent to the presbytery, within five months after each interlocutor is pronounced, to enter an appearance, and to shew, if they shall see cause, that the decree of modification pronounced is collusive and prejudicial to the benefice: Provided, That if the presbytery shall enter

an appearance in such process, it shall be competent to the Court to subject the minister insisting in such process in the whole or any part of the expense of process incurred by the presbytery.

XVIII. And be it further enacted, That all the powers given and granted by the said in part recited act to the commissioners thereby appointed, shall remain and continue in force, and receive such and the like effect as they do at present, excepting in so far as they are altered or repealed by this act.

The statute 50. Geo. III. *cap.* 84, “ for augmenting “ parochial stipends in certain cases in Scotland,” is in the following terms :

“ Whereas by an act of the Parliament of Scotland, made “ in the year 1633, intituled, Anent the rate and price of “ teinds ; and by another act of the Parliament of Scotland, “ made in the same year 1633, intituled, Commission for valuation of teinds not valued, rectifying the valuation of the “ same already made, and other particulars therein contained, it was statuted, ordained and declared, That all “ heritors and liferenters of lands in Scotland should be entitled to have the teinds or tithes of their lands valued at “ certain fixed rates to be paid for the same in all time to come : And whereas in many parishes in Scotland, where “ the stipends of the parochial ministers are payable out of “ teinds or tithes, in consequence of the depreciation of the “ value of money, the stipends of such parochial ministers “ have become inadequate to their support and maintenance, “ and on account of the valuations of teinds which have taken “ place, no funds exist out of which future augmentations of “ such stipends can be granted : And whereas in several parishes where the stipends of the parochial ministers are “ payable out of funds or revenues separate and distinct

“ from the teinds, such stipends have also become inadequate to the support and maintenance of the ministers thereof, and no funds exist out of which such stipends can be augmented : And whereas it is expedient that means should be provided for augmenting the stipends of each of such ministers as aforesaid, to a yearly amount or value of £. 150 Sterling, and it appears that an annual sum not exceeding £.10,000 Sterling will be sufficient to carry these purposes into effect :” May it therefore please your Majesty that it may be enacted, and be it enacted by, &c. That from and after the passing of this act, there shall in every year be set apart and appropriated in the hands of his Majesty’s Receiver-General and Paymaster in Scotland, out of the public revenues, and money received and collected by him, an annual sum, not exceeding in the whole the sum of £.10,000 of lawful money of Great Britain, to answer the purposes of this act, to be applied in manner herein-after mentioned.

II. And be it further enacted, That as soon as conveniently may be after the passing of this act, the clerks to the different presbyteries within Scotland shall make up accounts of the different parishes within each presbytery, the stipends of which parishes do not extend in their yearly amount or value to the sum of £. 150 Sterling, and which cannot be augmented to that extent under the laws at present in force, either by reason of the teinds of such parishes being already exhausted, or for want of other funds out of which such augmentation could be made, or where, from the small amount or value of the unexhausted teinds, it has been deemed inexpedient to bring actions of augmentation ; which accounts shall specify the amount of each such stipend in money, grain, or other articles, if not in use to be paid in kind, are convertible into money, and if in use to be paid in kind, the value thereof on an average of the last nine years preceding the passing of this act, and the period when such stipend was

last augmented, and if any unexhausted teind remains, specifying the amount or value thereof as far as the same can be ascertained; and the said accounts shall be transmitted to the teind clerk or principal clerk to the Lords of Council and Session, as commissioners for plantation of kirks and valuation of teinds, appointed by an act of the Parliament of Scotland in 1707.

III. And be it enacted, That when and as soon as the accounts shall be received from the clerks to the different presbyteries in manner before mentioned, the same shall, upon the application of any of the ministers interested, or of the procurator for the church on behalf of the whole, be taken into consideration by the Lords of Council and Session, commissioners as aforesaid, and a list or schedule shall thereupon be made up, under their direction and authority, of all such stipends, which from the causes aforesaid cannot be augmented to the annual amount or value of £. 150 under the laws at present in force, specifying the amount of each stipend in money, grain, or other articles in which the same is payable, and the rate at which such grain and other articles, if not in use to be paid in kind, are convertible into money, or if in use to be paid in kind, the value thereof on an average of the last nine years preceding the passing of this act, and of the sums necessary to augment each such stipend, including its present annual amount or value to the annual amount or value of £. 150 Sterling; provided that the said augmentation shall not exceed in the whole the annual sum of £. 10,000 Sterling; and in such list or schedule it shall and may be lawful to the said Lords of Council and Session, as commissioners aforesaid, to specify those cases in which in their opinion the teinds should be fully exhausted before any relief or augmentation should be granted under the authority of this act.

IV. Provided always, and be it enacted, That it shall and

may be lawful, in those cases where the present stipend does not amount to £. 150, and where the unexhausted teinds will not be sufficient to augment it to an amount beyond £. 150 and where the commissioners are of opinion that the teinds should be in the first instance exhausted, for each minister, whose case shall be so specified as aforesaid, forthwith to institute a process of modification and augmentation for obtaining the remainder of such unexhausted teinds; that it shall be lawful for the said Lords of Council and Session, as commissioners aforesaid, to award to him the whole of such unexhausted teinds as soon as the course of such process shall admit, any thing in an act passed in the forty-eighth year of his present Majesty's reign, entitled, *An act for defining and regulating the powers of the Commission of Teinds in augmenting and modifying the stipends of the clergy of Scotland, or in any other act or acts, to the contrary contained in anywise notwithstanding.*

V. And be it enacted, That the list or schedule so to be made up as aforesaid, shall, under the directions of the said Lords of Council and Session, as commissioners aforesaid, be forthwith printed, and a copy thereof shall be sent by their clerk to each minister whose stipend shall have been included in the accounts transmitted from the presbyteries to the said teind clerk, or principal clerk of the said Lords of Council and Session, as commissioners aforesaid, in manner before mentioned, and a copy to the clerk of each presbytery within Scotland, who shall thereupon give notice to each minister of the presbytery of the receipt of such printed copy of the aforesaid list or schedule.

VI. And be it enacted, That it shall and may be lawful to and for every minister of the presbytery, whose stipend shall not be specified in the said list or schedule, but whose stipend should in virtue of this act have been so specified therein, to make a representation to the presbytery of the bounds, shewing why his stipend should be so specified,

and for every minister whose stipend shall be specified in the said list or schedule to present objections thereto, if he shall see cause, to such presbytery of the bounds ; and it shall be lawful to such presbytery, and such presbytery is hereby required, to take such representations and objections into consideration, and to report their opinion upon each list or schedule as the same may appear to them, to the said Lords of Council and Session, as commissioners aforesaid : Provided always, that such report shall be made by such presbytery, and transmitted by the clerk of such presbytery to the teind clerk or principal clerk of the said Lords of Council and Session, as commissioners aforesaid, within six calendar months next after the said list or schedule shall have been received by the clerk of such presbytery.

VII. And be it enacted, That if any minister shall think himself aggrieved by any report made by, or proceedings of any presbytery in the matters aforesaid, it shall and may be lawful to such minister to present his petition to the said Lords of Council and Session, as commissioners aforesaid, stating the grounds of his objection or complaint in the premises ; and the said Lords of Council and Session, as commissioners aforesaid, shall order such petition to be taken into consideration in a summary way, and direct the same to be answered, or otherwise ; and shall determine in the matter of such objection or complaint as early as the circumstances of the case will permit ; and such determination shall be final and conclusive, and not subject to any appeal to the House of Lords.

VIII. And be it enacted, That the said Lords of Council and Session, as commissioners aforesaid, shall with all convenient dispatch after such reports shall have been received from the presbyteries as aforesaid, take the same, with the determination that may have been given on any petition as aforesaid, and the list or schedule formerly prepared by them, into consideration, and shall confirm the said list or



schedule, or make such alterations thereon as to them shall seem just and expedient, and shall adjust and settle the same; and after it shall have been so adjusted and settled, shall order the same to be recorded in their books.

IX. And be it enacted, That the said teind-clerk or clerk to the Lords of Council and Session, as commissioners aforesaid, shall forthwith make out an extract or certified copy of the said recorded list or schedule, and transmit the same to the Barons of his Majesty's Exchequer in Scotland, who shall appoint the same to be also forthwith recorded in their books; and shall thereupon issue a precept or warrant, addressed to his Majesty's said Receiver-General and Paymaster in Scotland, to each of the ministers of the respective parishes mentioned in such list or schedule, for payment to such minister of the annual sum which, according to such list or schedule, is necessary for augmenting his stipend to the annual amount or value of one hundred and fifty pounds, to be paid to him at the terms or times herein-after directed, during his incumbency in the parish mentioned in such precept or warrant, and shall cause such precept or warrant to be transmitted to the ministers therein mentioned.

X. And be it enacted, That as soon as the said Lords of Council and Session, as commissioners aforesaid, shall have decided in any process or processes for obtaining the remainder of any unexhausted teinds in manner herein-before directed, and shall thereupon, or upon any other ground, have determined with respect to the stipend or stipends of any minister or ministers which ought to be augmented under the authority of this act, and shall have ascertained the sum necessary for augmenting each such stipend to the annual amount or value of one hundred and fifty pounds, the said Lords of Council and Session, as commissioners aforesaid, shall cause a list or schedule of such stipend or stipends to be made out, in manner as herein-before directed, specifying the sum necessary for augmenting each such stipend to the

annual sum of one hundred and fifty pounds ; and such list or schedule shall be recorded in the books of the Teind Court, and an extract or certified copy thereof shall be made out, in manner herein-before directed, and shall be transmitted to the Barons of Exchequer, who shall cause the same to be also recorded in their books, and shall issue their precept or warrant, addressed to his Majesty's said Receiver-General and Paymaster in Scotland, to each of the ministers of the respective parishes mentioned in such list or schedule, for payment to such minister of the annual sum which, according to such list or schedule, is necessary for augmenting his stipend to the annual amount or value of one hundred and fifty pounds, to be paid to him at the terms or times hereafter directed, during his incumbency in the parish mentioned in such precept or warrant, and shall cause such precept or warrant to be transmitted to the minister therein mentioned.

XI. And be it enacted, That the augmentations by this act granted out of the fund before mentioned shall be payable by two half yearly payments, at the terms of Whitsunday and Michaelmas in each year ; and the first half yearly payment thereof shall be due and payable for the half year immediately preceding the term of Whitsunday last ; and the same shall be so expressed in the precepts or warrants to be issued by the Barons of Exchequer in manner herein-before directed ; and at the first term of Whitsunday or Michaelmas after the passing of this act, or as soon thereafter as the amount of the respective augmentations shall be fixed and settled, the said Receiver-General and Paymaster shall be, and is hereby required to pay to the minister mentioned in such precept or warrant, as herein-before directed to be issued, or to any person or persons duly authorised to that effect by such minister, the half yearly payment that may be due and payable to such minister at the time, subject to deduction for the first year, in manner herein-after

mentioned ; and at every subsequent term of Whitsunday or Michaelmas thereafter, the said Receiver-General and Paymaster shall be, and is hereby required to pay to such minister, or person or persons authorised as aforesaid, the half yearly payment or payments that may be due to such minister at the time.

XII. And be it enacted, That out of the first year's augmentation granted to such minister as aforesaid, and payable by virtue of this act, the said Receiver-General and Paymaster shall be, and he is hereby authorised and required, to deduct and retain the sum of one shilling in the pound sterling of the sum payable to each of such ministers as aforesaid, to be applied in manner herein-after directed ; but such deduction shall be made only from the augmentation payable for the first year under this act, and no such deduction shall be made from the augmentation payable for any subsequent year.

XIII. And be it enacted, That the said Lords of Council and Session, as commissioners aforesaid, shall cause to be made up an account of the expenses incurred, and of the recompence to be made to the persons employed under the authority of this act, for their labour and trouble in the matters aforesaid, and shall specify in such account the persons to whom such expenses and recompence shall be paid, and the sum payable to each person, not exceeding in the whole the amount of the deduction of one shilling in the pound, to be retained by the said Receiver-General and Paymaster in manner before mentioned, and shall certify the same to the said Barons of Exchequer ; and the said Barons of Exchequer shall from time to time issue their warrants upon the said Receiver-General and Paymaster, for payment to the persons specified in such account, or to their order, of the several sums of money therein specified.

XIV. And be it further enacted, That when the minister of any church or parish whose stipend shall have been spe-

cified in any list or schedule herein-before directed to be prepared by the said Lords of Council and Session, as commissioners aforesaid, shall die, or be removed from the charge of his church or parish, his successor in such church or parish, if no precept or warrant had been granted to his predecessor, shall be entitled to take all such steps in regard to obtaining of such precept or warrant as would have been competent to his predecessor, but shall be, as he is hereby bound and obliged to account for, and pay to his predecessor, or to the executors or personal representatives of his predecessor, whatever part of the augmentation granted under the authority of this act shall be due to such predecessor, or to the executors or personal representatives of such predecessor respectively; and if such precept or warrant had previously been granted, the minister succeeding to such church or parish shall be entitled to apply to the said Barons of Exchequer to be put in the place and stead of the minister so dying, or being removed as aforesaid, with respect to future payments under this act in the manner herein-after mentioned; and the said Barons of Exchequer, upon being satisfied that the minister so applying has succeeded to the church or parish of the minister so dying, or being removed as aforesaid, shall forthwith issue a precept or warrant to the said Receiver-General and Paymaster in favour of the minister so applying, for payment to him of the sums which were payable to the former minister of such church or parish, at the terms or times herein-before directed, during his incumbency in the church or parish mentioned in such precept or warrant, and shall cause such precept or warrant to be transmitted to the minister therein mentioned; and the sums therein mentioned shall be payable, and be paid upon such precept or warrant by the said Receiver-General and Paymaster to the minister mentioned therein, or to any person or persons duly authorised to that effect, at the term or terms, and in manner herein-before directed, and so on as often as

the case shall happen, with respect to all the ministers who shall succeed to any church or parish, the stipend of which shall be inserted in any such list or schedule as aforesaid.

XV. Provided always, and be it enacted, That the rights and interests of the respective ministers who may be entitled to the augmentations to be granted under the authority of this act, shall, in case of their decease or removal, cease and determine at the same terms of Whitsunday or Michaelmas, and in the same manner, as the rights and interests of the clergy of Scotland in their other stipends cease and determine by the law of Scotland ; and that in like manner, the rights and interests of their successors to the said augmentations to be granted under the authority of this act, shall commence at the terms of Whitsunday or Michaelmas immediately preceding their admission to their respective churches or parishes, in the same manner as the rights and interests of the clergy of Scotland to their other stipends do commence by the law of Scotland.

XVI. Provided also, and be it enacted, That the executors or personal representatives of the ministers deceasing, whose stipends shall be augmented under the authority of this act, and the executors or personal representatives of their successors, shall be entitled to draw one half-yearly moiety of the augmentations to be granted under the authority of this act, in name of Ann, over and above the stipends that may have been due to the minister deceasing, in the same manner as is directed by the law of Scotland with respect to the other stipends of the clergy of Scotland ; and the Barons of his Majesty's Exchequer shall grant precepts or warrants to his Majesty's said Receiver-General and Paymaster, for payment of the said half-yearly moiety in name of Ann, to those having right thereto by the law of Scotland, upon their receipt, and this without the necessity of any confirmation or other title to be made up in that behalf.

XVII. And be it enacted, That when the pastoral charge

in any of the churches or parishes, the stipends of which shall be augmented as herein-before mentioned, shall at any time hereafter become vacant, the several sums herein-before directed to be appropriated for augmenting such stipends respectively, shall not during such vacancy (excepting only with regard to the half-yearly moiety in name of Ann, directed to be paid as herein-before specified) be applicable to the purposes to which vacant stipends in Scotland are at present by law applicable; nor shall they in any such case be subject as vacant stipends are, to the disposal of the patrons of such vacant parishes, or of the Barons of his Majesty's Exchequer, in parishes of which his Majesty is patron, or of the synods of Argyle or Glenelg, which have, or claim to have a right by law to dispose of the vacant stipends within their bounds.

XVIII. And be it further enacted, That in the event of every vacancy occurring in the parishes in which the parochial stipends shall have been augmented under the authority of this act, the annual sums herein-before directed to be appropriated for augmenting the stipends herein-before mentioned, shall after payment of the Ann in manner before directed, during any vacancy in any of the said churches or parishes, be payable, and be paid to the trustees appointed by the act of the nineteenth year of the reign of his present Majesty, intituled, An act for the better raising and securing a fund for a provision for the widows and children of the ministers of the Church of Scotland, and of the heads, principals, and masters in the Universities of St Andrew's, Glasgow, Edinburgh, and Aberdeen; and for repealing two acts made in the seventeenth and twenty-second years of the reign of his late Majesty King George the Second for those purposes, or to their general collector, to be applied by the said trustees in the way they shall judge most expedient and effectual for securing a permanent addition to the annuities provided to the widows therein mentioned in all time coming.

XIX. And be it enacted, That when any such vacancy shall occur, the said Barons of Exchequer shall, upon the application of the said trustees or their general collector, issue their precept or warrant to the said Receiver-General and Paymaster, for payment to the said trustees, or their general collector as aforesaid, of the whole amount of the sums directed to be appropriated under the authority of this act, in augmentation of the stipend of the said vacant church or parish, at the same term or terms at which vacant stipends are at present by the law of Scotland payable to patrons and others having interest therein.

XX. And be it further enacted, That it shall and may be lawful to and for the said general collector, under the authority and by the directions of the said trustees, and according to such regulations as they shall judge expedient, to lend out at interest, on sufficient security, the several sums hereby appointed to be paid to the said trustees or their general collector by the said Receiver-General and Paymaster as aforesaid, from time to time, for the purpose of providing a permanent fund, in addition to the annuities before mentioned, established under the authority of the said recited act of the nineteenth year of the reign of his present Majesty.

XXI. And be it enacted, That all payments to be made by the said Receiver-General and Paymaster of the several sums of money herein before directed to be paid by him to the several persons, and for the several purposes herein-before mentioned, upon the receipts of those legally entitled or authorised to receive the same, shall be allowed in his accounts.

XXII. And be it enacted, That the several precepts or warrants to be issued in manner before mentioned, and the receipts to be granted for the sums of money payable as herein-before directed, shall not be liable to any stamp-duty.

XXIII. And be it enacted, That if any person or persons shall forge or counterfeit, or cause or procure to be forged

or counterfeited, any such precept or warrant, or precepts or warrants as aforesaid, or any signature or signatures thereto, or any written factory or mandate for receiving any sum or sums of money made payable under the authority of this act, or any signature or signatures thereto, or any receipt or receipts granted on payment of such sums of money as aforesaid, or signature or signatures thereto, and shall issue the same with an intent to defraud the said Receiver-General and Paymaster, or his successors in office, or any person or persons entitled to any sum or sums of money payable under the authority of this act, then every person so offending and being thereof lawfully convicted, shall be punished as persons guilty of the crime of forgery are liable to be punished by the law of Scotland.

XXIV. And be it enacted, That no fees or expenses whatsoever shall be charged by or paid to any clerks or officers of the said Lords of Council and Session, as commissioners aforesaid, or of the said Barons of Exchequer, or of the said Receiver-General and Paymaster, or any clerk or officer employed by or under him, save and except the expenses and recompence for the first year, to be ascertained in the account of the same, to be made up and paid in manner before directed.

XXV. And be it enacted, That the said Lords of Council and Session, as commissioners aforesaid, and the said Barons of Exchequer, shall and may from time to time give such directions for the regulations of their respective clerks and officers employed, or that may be employed to carry this act into execution, where special directions are not hereby given relative to the same, as to the said Lords of Council and Session, as commissioners aforesaid, and to the Barons of Exchequer, shall seem fit and expedient.

The act 1. and 2. of Geo. IV. *cap.* 38, § 9. and 10, are as follows :



IX. And be it enacted, That from and after the passing of this act, no person shall be capable to be appointed principal clerk of the Commissioners for Teinds, except a person legally qualified to be appointed a principal clerk of session; and no principal or depute clerk of the bills, to be hereafter appointed, shall, after his appointment, practise as an advocate or agent before the Court of Session, under pain of deprivation of office; nor shall any person henceforth to be appointed clerk to the Commission of Teinds practise as an advocate or agent before the Commission of Teinds, under pain of the like penalty.

X. “ And whereas the provisions heretofore made for the  
“ more regularly conducting the business before the Teind  
“ Court, and bringing the processes of augmentation and loca-  
“ lity which come before it to a conclusion, have been found  
“ insufficient in practice, and other provisions and regula-  
“ tions are required ;” Be it enacted, That it shall and may be lawful for the Court of Session, as commissioners for plantation of kirks and valuation of teinds, to pass any act or acts of sederunt from time to time regulating the form and manner of proceedings in all processes of augmentation and locality that may come before them, in such manner as they may see proper and expedient for the dispatch of business, and for bringing such processes to a final conclusion: Provided always, that copies of all such acts of sederunt shall be transmitted by the President of the Court of Session to his Majesty’s Secretary of State for the home department, to be by him laid before both Houses of Parliament, at or immediately after the commencement of the ensuing session; and no such act or acts of sederunt shall become in force or receive effect until the expiration of three calendar months after the first day of the meeting of such session of Parliament.

The act 5. of Geo. IV. *cap.* 72, “ for amending and

“ rendering more effectual an act for augmenting parochial stipends in certain cases in Scotland,” is in the following terms :

I. “ Whereas an act passed in the fiftieth year of the reign of his late Majesty, King George the Third, intituled, An act for augmenting parochial stipends in certain cases in Scotland, by which it was enacted, that as soon as conveniently might be after the passing thereof, the clerks of the different presbyteries within Scotland should make up accounts of the different parishes within each presbytery, the stipends of which parishes did not extend in their yearly amount to the sum of one hundred and fifty pounds Sterling, and which could not be augmented to that extent under the laws then in force ; and upon receiving such accounts, the same were directed to be taken into consideration by the Lords of Council and Session, as commissioners for plantation of kirks and valuation of teinds, and a list or schedule should thereupon be made up, under their direction and authority, of all such stipends which, from the causes mentioned in the said recited act, could not be augmented to the annual amount or value of one hundred and fifty pounds under the laws then in force, specifying the amount of each stipend, in money, grain or other articles in which the same was payable, and the rate at which such grain or other article, if not in use to be paid in kind, were convertible into money, and if in use to be paid in kind, the value thereof on an average of the last nine years preceding the passing of said act ; and so soon as the said Lords of Council and Session, as commissioners foresaid, should have determined with respect to the stipend or stipends of any minister or ministers which ought to be augmented under the authority of the said recited act, the said Lords of Council and Session, as commissioners foresaid, should

“ cause a list or schedule of such stipend or stipends to be  
“ made out in manner directed by the said recited act, specifying the sum necessary for augmenting each such stipend to the annual sum of one hundred and fifty pounds,  
“ and an extract or certified copy thereof, made out in the manner therein directed, should be transmitted to the Barons of Exchequer, who should issue their precept or warrant, addressed to his Majesty’s Receiver-General and Paymaster in Scotland, to each of the ministers of the respective parishes mentioned in such list or schedule, for payment to such minister of the annual sum which, according to such list or schedule, is necessary for augmenting his stipend to the annual amount or value of one hundred and fifty pounds, to be paid to him at the terms or times therein directed during his incumbency : And  
“ whereas, by the alteration in the price of grain, and other circumstances, most of the stipends included in the present lists have been considerably reduced below the said sum of one hundred and fifty pounds, and it is expedient that the amount of such stipends should from time to time be reconsidered, so as to secure to the incumbents of such parishes a stipend of one hundred and fifty pounds each at all times, as nearly as may be : And  
“ whereas it is also expedient that some additional provision should be made in certain cases for such of the parochial clergy of Scotland as cannot, according to law, be provided with a manse or glebe : And whereas an annual sum not exceeding two thousand pounds, in addition to the sum provided by the before-recited act, will be sufficient to carry these purposes into effect :” Be it therefore enacted, That as soon as conveniently may be after the passing of this act, and from time to time, once in five years, at the expiration of each successive five years in all time hereafter, the clerks to the different presbyteries within Scotland shall make out accounts in the manner di-

rected by the said recited act, of the different parishes within each presbytery, the stipends of which parishes do not at the time extend in their yearly amount or value to the sum of one hundred and fifty pounds Sterling, and which cannot be augmented to that extent under the laws at present, or to be then in force, by reason of the causes mentioned in the said recited act, which accounts shall specify the amount of each such stipend in money, grain or other articles, according to an average of the last five years preceding the date of making out the same respectively, and the said account shall be transmitted to the teind clerk, or principal clerk of the Lords of Council and Session, as commissioners for plantation of kirks and valuation of teinds, who shall thereupon proceed, in the manner directed by the said recited act, to take the same into consideration, and to adjust and settle the same; and so soon as the said Lords of Council and Session, as commissioners aforesaid, shall have adjusted and settled any such list or schedule, or shall have ascertained the sum necessary for augmenting each such stipend, in the manner directed by the said recited act, as often as the same is required to be done by this act, to the annual amount or value of one hundred and fifty pounds, the said Lords of Council and Session, as commissioners aforesaid, shall cause a list or schedule, or lists or schedules, to be made out in the manner directed by the said recited act, specifying the sum necessary for augmenting each such stipend to the annual sum of one hundred and fifty pounds, and every such list or schedule shall be recorded and transmitted in the manner directed by the said recited act; and the said Barons of Exchequer shall issue their precept or warrant, addressed to his Majesty's said Receiver-General and Paymaster for Scotland, to each of the ministers mentioned in any list or schedule made up under the authority of this act, for payment to such minister of the annual sum which, according to such list or schedule, shall appear to be necessary for augmenting his

stipend to the annual amount or value of one hundred and fifty pounds, to be paid to him during his incumbency, and to his successor, at the terms or times and in the manner directed by the said recited act, unless and until an alteration shall take place in the manner herein-after directed.

II. " And whereas in some parishes in Scotland, the ministers thereof have small stipends, and are not provided with a manse or a glebe, and it is reasonable that in such cases an additional stipend should be paid to such ministers, as some compensation for the want thereof:" Be it therefore enacted, That as soon as conveniently may be after the passing of this act, the clerks to the different presbyteries within Scotland shall make up a list or lists of any parish or parishes within each presbytery, the minister whereof is without a manse and glebe, and of any parish or parishes the minister whereof is without a manse, and of any parish or parishes the minister whereof is without a glebe, the stipend of any which minister shall be under the amount or value of two hundred pounds *per annum*; and every such list shall be transmitted to the said teind clerk, or principal clerk to the said Lords of Council and Session, as commissioners aforesaid.

III. And be it further enacted, That after such list shall have been received by such teind or principal clerk, it shall and may be lawful for the said Lords of Council and Session, as commissioners aforesaid, upon the application of any of the ministers interested, or of the procurator of the church on behalf of the whole, to inquire into the circumstances of the case, and if they shall find that the stipend in any parish is under the annual amount or value of two hundred pounds, and that the minister cannot be provided with a manse and a glebe, or with a manse or a glebe as the case may be, they are hereby directed to cause a list or schedule of every such parish where the minister cannot be so provided to be made out, and of the sum which ought to be allowed in

respect of the want thereof, as the case may be, but so as that the total amount of the stipend shall not exceed two hundred pounds *per annum*, in any case where the minister is without both manse and glebe, or one hundred and eighty pounds where the minister is without a manse or a glebe, as the case may be, and cannot be provided with the same respectively ; and every such list or schedule shall be recorded in the books of the Teind Court, and an extract or certified copy thereof shall be made out and transmitted to the Barons of Exchequer, who shall cause the same to be also recorded in their books, and shall issue their precept and warrant, addressed to his Majesty's said Receiver-General and Paymaster in Scotland, to the minister of the parish, or to each of the ministers of the respective parishes mentioned in such list or schedule, for payment to such minister of the annual sum which, according to such list, is to be paid to him, in respect of the want of a manse and glebe, or the want of a manse or glebe, as the case may be, during his incumbency in the parish mentioned in such precept or warrant, at the terms and times, and in the same manner as the augmented stipends settled by the said recited act of Parliament are thereby directed to be paid to the said respective ministers entitled to the same.

“ IV. And whereas, from the alteration of circumstances “ it may from time happen that the sum to be allowed to “ some of such ministers, to make up their stipends to “ the sums allowed by this act, may fall below these sums “ respectively :” Be it therefore enacted, That once in every five years in all time hereafter, and at the expiration of five years from the date of each such transmission, the clerks to the different presbyteries in Scotland shall make out accounts of the amounts of the different stipends to which additions shall have been made, as directed by this act ; and whenever such clerks shall find any such stipend to be five pounds *per annum* less than the sum allowed pursuant to this

act, according to the average prices of grain in the county in which such parish shall be situated for the five years immediately preceding, the said clerks shall transmit an account of such stipends to the teind clerk, or principal clerk of the said Lords of Council and Session, as commissioners aforesaid, who shall thereupon proceed to increase each such stipend, so as to make the sum to be thereafter allowed amount as nearly as may be to the sum allowed under this act, according to the average prices of grain for five years preceding the date of such transmission of accounts respectively; and so soon as the said Lords of Council and Session shall have adjusted and settled, or ascertained the sum necessary so to be allowed according to such diminution, as the case may be, as often as the same is directed by this act, the said Lords of Council and Session shall cause a list or schedule, lists or schedules, to be made out in the manner directed by the said recited act, and this act, specifying the sum thenceforth to be issued, until an alteration in the amount of such sum shall take place in the manner directed by this act; and every such list or schedule shall be recorded, and thereafter transmitted, in the manner above directed in the case of the first allowance under this act; and the said Barons of Exchequer shall issue their precept or warrant to his Majesty's said Receiver-General and Paymaster for Scotland, to each of the ministers mentioned in any such list or schedule, for payment to such minister of the annual sum which, according to such list or schedule, is to be paid to him during his incumbency, and to his successor, at the terms or times, and in the manner directed by the said recited act, unless and until an alteration shall take place in the manner directed by this act.

V. Provided always, and be it enacted, That the augmentations of stipends authorised to be made by this act shall not exceed in any one year the sum of two thousand pounds Sterling, over and above and in addition to any balance of

the sum of ten thousand pounds granted by the said recited act, remaining unapplied for the purposes thereof.

VI. And be it enacted, That all the directions given by the said recited act, with respect to the matters and things thereby appointed to be done, shall be observed and followed in executing this act, as far as such directions are not inconsistent with the same.

“ VII. And whereas, by an act passed in the fifty-fifth year of the reign of his said late Majesty, intituled, An act for granting to his Majesty certain sums out of the respective consolidated funds of Great Britain and Ireland, and for applying certain monies therein mentioned for the service of the year 1815, and for further appropriating the supplies granted in this session of Parliament, a sum of ten thousand pounds was granted to his Majesty to make provision for the augmentation of the maintenance of the poor clergy of the Established Church of Scotland, to be issued and appropriated pursuant to the provisions of an act passed or to be passed for that purpose: And whereas, by an act passed in the fifty-eighth year of the reign of his late Majesty, intituled, An act for applying certain monies therein mentioned for the service of the year 1808, a further sum of ten thousand pounds was granted for a similar purpose, to be issued and appropriated in a similar manner: And whereas, by another act passed in the fifty-ninth year of the reign of his said late Majesty, intituled, An act for applying certain monies therein mentioned, for the service of the year 1819, and for further appropriating the supplies granted in this session of Parliament, a further sum of ten thousand pounds was granted for a similar purpose, to be issued and appropriated in a similar manner: And whereas these three several sums of ten thousand pounds being no longer required for the purposes for which they were granted:” Be it enacted, That so much of the said acts as authorises the issue of the said



several sums of ten thousand pounds, shall be, and the same are hereby repealed.

And the act 6. of Geo. IV. *cap.* 120, § 54, declares, That

Whereas certain inconveniences have been experienced in proceedings of a judicial nature carried on before the Lords Commissioners for plantation of kirks and valuation of teinds; be it enacted, That from and after the eleventh day of November next, all actions for the valuation or sale of teinds, or actions of proving the tenor of the same, all actions of suspension or reduction of localities, and all actions of declarator or reduction connected with teinds, which can at present be competently brought before the said Lords Commissioners for the plantation of kirks, shall be brought before and decided by one or other of the divisions of the Court of Session, who shall be held as a quorum of the said commissioners; and all such causes shall be proceeded in, as nearly as possible, according to the forms prescribed by this act for the preparation of causes in the Court of Session: and the Lord Ordinary shall have the same power to determine the cause, or to report the same to the Inner-House, as is declared to be competent by this act to the Lord Ordinary in the Outer-House, in causes before the Court of Session; and in like manner, he shall not be entitled to review his own interlocutors, but the same shall be subject to review only in the Inner-House, in the manner directed in causes before the Court of Session: Provided always, that the jurisdiction of the Lords Commissioners for plantation of kirks and valuation of teinds, in assigning or modifying competent stipends to the parochial clergy out of the teinds of the parish, and in uniting and disjoining parishes, and generally whatever jurisdiction the said Court of Teinds may possess of a ministerial and discretionary nature, shall nowise be altered or affected by this act, but the same shall con-

tinue to be exercised by the whole Lords Commissioners for plantation of kirks and valuation of teinds, or quorum thereof, in the same way and manner as heretofore; but all actions in relation to localling of modified or augmented stipends among heritors, and other causes which may be remitted by the said Lords Commissioners to a Lord Ordinary, shall thereafter be conducted as nearly as may be according to the forms prescribed for causes before the Court of Session, and the interlocutors of such Lord Ordinary shall be subject to review only by the division of the Court of Session to which such Lord Ordinary belongs, which division shall to that effect be held as a quorum of the said commissioners; and in all the aforesaid actions, and in all other matters connected with teinds, the teind clerk shall continue as heretofore to officiate as clerk.

#### ACTS OF SEDERUNT.

The acts of sederunt on this subject are as follow:—A. S. 22. Feb. 1809, containing a regulation for the Teind Court.—A. S. 5. July 1809, which describes the form of procedure in processes of augmentation, modification and locality,—and 12. Nov. 1825, amended by A. S. 24. Nov. 1825, relative to the new judicature act, 6. Geo. IV. *cap.* 120.

Stair, II. 8. 14.—Ersk. II. 10. 30.—Connell on Tithes, I. 260, 297.

Ramsay Irvine, 14. May 1794, Mor. 15698.

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CRUIVES AND ZAIRS.—See FISHERY.

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CURATORS.

There are two distinct classes of persons for whom curators are necessary, when deprived of paternal guardianship :—insane persons, and those in minority ;—the former being totally unable to take any charge of themselves or their affairs, and the latter requiring advice and direction from those of more mature judgment and experience.

With regard to insane persons, the statute 1585, *cap.* 18, declares, “ that the nearest agnates and kinsmen of natural fools, idiots, and furious persons, shall be served, received and preferred, according to the disposition of the common law, to their tutory and curatory.”

Minors are not regarded by law as wholly incapable of any act or contract in the administration of their affairs. But, in order to be legally binding, the consent of curators is required in certain cases, while in others it must be the act of the tutor or guardian himself. The distinction between these two situations is explained by Mr Erskine in that part of his *Institute*, to which reference is made in the close of this title. From this limited responsibility of minors, various statutes have been thought necessary to fix the precise degree and extent of obligation.

According to the act 1474, *cap.* 52, the nearest agnate is tutor of law. It declares,

It is statute and ordained, anent the briefe of tutorie, that it be understanding in time cumming, that he that is nearest agnat, and of twentie-five zeires of age, fulfilling the lave of the poyntes of the briefe, sall be lauchfull tutour, suppose the childe that happenis to be in tutorie have ane zounger brother or sister, notwithstanding that the agnat is not immediat to succede to the childe, because of zounger brother and sisters.

By 1498, *cap.* 51, minors may revoke deeds to their prejudice made while they were under age. It declares as follows :

Sen it is leaved and permitted be the constitutions and ordinances of lawes civil and cannon, that persons constitute in zouthhead and tender age, quhilkis ar greatly damnaged and skaithed in their heritages, be imprudent alienations, donations, venditions, and permutacions of the samin, may at their perfection of age make revocation, and reduction of thinges done prejudicial to them in their minorities and tender age.

By 1540, *cap.* 120, when minors die intestate, their moveables go to their next of kin.

Anent the artickle proponed, for-sameikle as oft-times zoung persones dies, that may not make testamentes, the ordinares usis to give their executoures datives to their gudes, quhilkis intromettis therewith, and with-drawis the gudes fra the kin and friendes, that suld have the samin be the law : It is statute and ordained, bee the Three Estaites of this present Parliament, that quhair ony sik persons dies within age, that may not make their testamentes, the nearest of their kin to succede to them, sall have their gudes, without prejudice to the ordinares, anent the quote of their testamentes.

By 1555, *cap.* 35, minors of a certain age may choose

curators for themselves, where their father has made no appointment.

Because it is understandin, that be the giving of curatoures to minores bee sindrie judges, there hes bene great skaith susteined be the saidis minores: Therefore it is statute and ordained, That in all times cumming, quhen onie minor passis the zeires of his tutorie, and desiris curatoures, that he cum before his judge ordinar, and desire of him ane summounds or edict, to warne twa, at the least, of the maist honest and famous of the minor's kin, and all uthers havand interesse, quhilk sall be warned lauchfullie: That is to say, the special persones personallie, or at their dwelling-places, givand ane copie to their wives or servandes, or affixand it on their zettes or dures, and uthers havand interesse generallie, at the mercat croce of the head burgh of the schire, quhair the saidis minores hes their landes or gudes, to compeir atane certaine daye, upon nine dayes warning at the least, to heare and see the curatoures desired be the said minor, to be given to him unto his perfite age of twentie ane zeires, and caution foundin, *de fideli administratione*, quhilkis beand given in manner foresaide, they sall not be revoked nor discharged, nor uthers chosen to the minor, unto the time they be called before the Lordes of Councell, or uthers judges ordinar, at the will of the bairne, to heare and see them discharged, and revoked for reasonable causes, quhilkis being foundin of veritie, they then to be discharged, and uthers curatoures given in their places be the ordour foresaid, with caution, and na uther-wise.

The act 1672, *cap. 2*, "concerning pupils and minors, tutors and curators," declares,

Our Sovereign Lord, considering the great prejudice and inconvenience befalling to pupils and others, who cannot provide for, or defend themselves, That their tutors or cura-

tors have immediate access to their charter-chests, writs, evidents and securities of their lands, sums of money, and others belonging to them, which they may imbesil, suppress, or by collusion give up to their debtors or other parties interested, without just satisfaction; or otherwise, having gotten satisfaction, there is no mean by which a charge can be made up against the saids tutors and curators, but themselves, when they are brought to an account, make both their own charge and discharge; and in case of their decease, they who succeed to them, for the most part, can have no charge made up against them at all: For remeed whereof, his Majesty, with advice and consent of his Estates of Parliament, statutes, ordains and declares, that no tutor or curator of any pupil, minor, idiot or furious person, to be named or designed in any time coming, or who is not actually stated and entered in the said office, shall have power or authority to exercise the said office of tutor or curator, or to meddle with the writs, evidents, means and estate of the saids pupils, minors, idiots or furious persons, until first an inventar be made up, in manner after specified, by the saids tutors and curators, with advice and consent of the nearest of kin on the father's side, and the nearest of kin on the mother's side, who shall be majors, and within the kingdom for the time: Which inventar shall be subscribed by the saids tutors and curators, and the saids nearest of kin; and one subscribed double thereof kept by the saids tutors or curators, another by the nearest of kin on the father's side, and the third by the nearest of kin on the mother's side: All which subscribed duplicats shall be judicially produced before the judge ordinar of the place, where the pupil, minor, idiot or furious person their chief residence is, and an act made upon production thereof, bearing the production of the inventar, and expressing the names of the persons subscribers thereof, and in whose custody the same were left; and that the duplicats be also subscribed by the clerk of court, that they may not

be altered thereafter ; and in case the nearest of kin on both sides will not concur in making up the inventar in manner foresaid, the saids tutors and curators shall raise summonds at their instance, before the saids judges ordinar *respectively*, for summonding the nearest of kin that are majors, and within the countrey, upon either side, for decerning them to concur in making up of the said inventar in manner foresaid : And in case they compear not, or do not concur as said is, with certification, the said inventar shall be made up by the said tutor or curator, with advice and consent of the judge ordinar, or any whom he shall delegate or appoint, who shall subscribe three duplicats of the said inventar with the saids tutors or curators, whereupon a judicial act shall be made, and the duplicats subscribed by the clerk, in the same manner as if the nearest of kin had concurred ; and a duplicat thereof shall be kept by the saids tutors and curators, and the other two duplicats shall remain in the clerk's hands, to be delivered to the nearest of kin on the father and mother's side, being closed up and sealed by the saids tutors or curators, and the person delegate for making the said inventar as said is ; which inventar shall contain the names and designations of the lands belonging to the pupils, minors and others foresaid, and the bands, counts and tickets due to them, and sums therein contained, and their moveables, as well heirship-moveable as other moveables : And in case that thereafter any other lands, debts, sums of money, or other goods and gear whatsoever belonging, or that may happen to belong to the said pupils, minors, idiots, or furious persons, shall come to the knowledge of the saids tutors or curators, so that they may attain to the possession thereof ; in that case, and within the space of two moneths after they attain to the possession of the same, they shall eke the same to the foresaid inventar, and make a judicial act thereupon in the hands of the clerk of court where the principal inventar was made, and shall leave two duplicates of the said

ceek or ceeks, one or moe, sealed as said is, in the hands of the said clerk, for the use of the nearest of kin as said is. And it is hereby further declared, that the debtors of the pupils, minors, idiots or furious persons, shall not be obliged to make payment to the tutors or curators of the saids persons, of any sums due by them, unlesse the said tutor or curator show to the saids debtors, that the sums or goods demanded from them are contained in the saids inventars or ceeks subscribed by the saids nearest of kin, or by the clerk of court in maner *respective* foresaid. And it is hereby further declared, That if the saids tutors or curators shall failzie in making up the saids inventars and ceeks in manner above-written, They shall be lyable both for intromission and omission, and shall have no allowance or defalcation of the charges and expenses wared out by them in the affairs of the saids pupils, minors, idiots or furious persons; and shall be removable from their office as suspect tutors and curators, if they fail in making up the ceeks from time to time in manner foresaid. It is alwayes hereby declared, that this act shall not prejudice pupils, minors, and other persons aforesaid, to charge their tutors or curators with what it can be made appear they have intrometted, or might have intrometted with, over and above what is contained in the inventar. And further, his Majesty, with advice and consent foresaid, statutes and ordains, That all gifts of tutory, that shall be granted hereafter, by his Majesty or his Exchequer, shall proceed upon citation of the minor's nearest of kin on both sides, at the instance of the cravers of the saids gifts, that they may be heard, if they have any thing to say against the person to whom the gift is to be granted; or, upon consent first obtained thereto, under the hands of the said nearest of kin: And ordains that the said gifts shall bear expressly that the nearest of kin were cited, or consented to the passing of the said gifts; certifying all who shall procure gifts of tutory or curatory foresaid, without citation



or consent of the saids nearest of kin, or where the samin is not expresly mentioned therein, That these gifts shall be declared null and void, by way of exception or action, at the instance of any person who shall have obtained a gift of the saids tutory or curatory, conform to the tenor of this present act.

The act 1681, *cap.* 19, “ concerning oaths of minors,” is as follows :

Our Sovereigne Lord, and Estates of Parliament taking to their serious consideration the great abuses which may be committed against minors within twenty-one years of age compleat, by causing them subscribe bonds of borrowed money, contracts of alienation of their lands, dispositions, discharges, and other writs of importance, and ratifie the same by oath, swearing that they shall never come in the contrary, thereby depriving them of all the benefite of revocation, reduction, and restitution *in integrum*, allowed to them by the laws of this kingdom, where such oaths are not made: It is therefore statute and ordained by the King's Majesty, with advice and consent of the saids Estates, That no such oaths shall be exacted in time coming ; and in case of contravention, declares the contract to be void and null, and that no execution shall pass thereupon ; and declares the elicitor or exacter of the oath to be infamous ; and it is hereby declared, that it shall be competent to any person related to the minor to obtain the saids writs to be declared void and null, be way of action, exception, or reply.

The act 1696, *cap.* 8, “ anent the nomination of tutors and curators,” is as follows :

Our Sovereign Lord, and the Estates of Parliament, considering, that tutors nominate by a father to his children, are persons in whom he reposeth the greatest trust ; and that the tutors nominate frequently decline the office, being un-

willing to subject themselves to the hazard of omissions, of being obliged *in solidum*, each of them for others; and likewise considering, that the father can make a better choice of curators for his children who are minors, than minors could make for themselves: Therefore his Majesty, with advice and consent of the Estates of Parliament, statutes and ordains, That it is, and shall be lawful for the father, by any act or deed in his *liege poustie*, to make a nomination of such persons as he thinks fit to be tutors, and of such persons as he thinks fit to be curators to his children during their minority, containing this provision and quality, that the said tutors or curators shall not be liable for omissions, but for their actual intrusions with the means and estate descending from the father, and other deeds of administration thereanent; and that each of them shall only be liable for himself, and not *in solidum* for others. And it is hereby statute and ordained, That the tutors or curators so nominate, shall not be liable for omissions, but only for their actual intrusions with the means and estate descending from the father, and other deeds of administration thereanent, and that each of them shall only be liable for himself, and not *in solidum* for others; and that the curators named by the father accepting before the judge ordinary, in the terms of their nomination, shall have right to exercise the office during all the years of the minority. And it is hereby declared, That where the same persons are named by the father to be both tutors and curators, it shall be lawful and free to those who shall accept and exercise the office of tutory, to decline and accept as curators after the pupillarity expires, as they think fit; declaring always, That if the condition of any of the tutors or curators to be named with the qualities above specified, shall change and become such as any near relation to the pupil or minor shall think fit to represent the same to the Lords of Session, to the end after mentioned; then, and in that case, the said Lords are hereby empowered, upon the

said complaint, and a citation upon it, without abiding the order of the roll, to ordain the foresaid tutor and curator, upon such reasons as they shall find probable, either to find good and sufficient caution for their administration, or to remove; and if he refuse, to remove him. And lastly, providing that nothing in this act shall liberate from, or dispense with the making of inventories.

And the act 1696, *cap.* 41, declaring that “ minors “ are free from personal execution for civil causes during “ their pupillarity,” is as follows :

Our Sovereign Lord, with advice and consent of the Estates of Parliament, statutes and ordains, That no minor within the years of pupillarity be liable to caption or warding, for any debt, or civil cause; but declares all such minors, in respect of their nonage, and during their pupillarity foresaid, to be exempted and freed from the same.

#### ACTS OF SEDERUNT.

A. S. 24. June 1665, declares, That a pro-tutor without a title shall be liable for what he might have intromitted with, as well as for what he actually did intromit with, in the same way as other tutors are liable. — A. S. 25. February 1693, declares, That tutors, who have not made inventory conformably to the act 1672, shall not be allowed expenses of process or necessary legal diligence, but only expenses laid out on the minor's house and estate, or entertainment. — And A. S. 13. February 1780, § 1-9, containing rules for factors to minors.

Ersk. B. I. 7. 1. and 50.—Stair, B. I. tit. 6.—Bell, II. 527.

#### DECISIONS—CURATORS TO MINORS.

Cowans, 19. Jan. 1788, Mor. 7452.—Bell, 20. March 1784,

*ib.* 16374.—Robertson, 28. May 1814, F. C.—Baird, 13. Jan. 1741, *ib.* 16346.—Brown, 1. Feb. 1815.—Anstruther, 3. March 1818.—Young, 19. Feb. 1818.—Wilson, 10. March 1819.—Stoddart, 30. June 1812.—Pitcairn, Feb. 1731, 16339.—Dfimore, 27. Jan. 1744, 16349.—Bannatyne, 14. Dec. 1814.—Calder, 11. Dec. 1811.—Lord Reay, 5. Feb. 1800, 16385.—Hallows, 1. March 1794, 14981.—Colt, 6. March 1800, 16387.—Ross, 9. March 1820.—Annand, 7. March 1817, F. C.—Finlayson, 26. Dec. 1810.—Vere, 29. Feb. 1804, 16389.—Wallace, 8. March 1817.—Henderson, 19. Jan. 1803, 14982.—Hay and Thomson, 20. June 1811.—Graham, 6. March 1798, 5599.—Ross, 31. Jan. 1793, 5545.—Morton, 11. Feb. 1818.—Elphinstone, 28. May 1814.—Wilson, 26. June 1789, 16376.—Kilpatrick, 25. Jan. 1793, 16381.—Gibson and Thomson, 21. Dec. 1811.—Rob, 22. Dec. 1814.—Williamson, 30. June 1815.—Thomson, 16. June 1812.—M'Turk, 7. Feb. 1815.—Govan, 20. Dec. 1814.—Gib, 5. Feb. 1767, 16363.—Spalding, 19. May 1809.—Hamilton, 25. Feb. 1813.—Fowler, 16343.

## CURATORS TO INSANE PERSONS.

Towart, 16. May 1817, Dow, V. 231.—Dewar, 25. Feb. 1809.—Walker, 8. March 1806, Mor. App. No. 3. *vide* "*Proof*."—Morton, 11. Feb. 1813.—Pollock, 10. Dec. 1811.—Millar, 15. May 1810.—Leith, 17. Jan. 1811.

## DEATH.

Prior to the year 1698, if a person, who had granted a procuratory of resignation, precept of seisin, assignation or other registrable deed, died before execution of such mandates, they fell to the ground. And, if either

of the parties in an action died during its dependance, it became necessary to bring a process of transference, before further procedure could take place in the original action.

But the statute 1693, *cap.* 15, altered the law on both of these points. It is in the following terms :

Our Sovereign Lord and Lady, the King and Queen's Majesties, with advice and consent of the Estates of Parliament, statute and declare, That all writs registrable, may be registrable after the death of the creditor, at the instance of his heir, executor, or assigney, as well as of before ; and that upon production of a service, or retour, in the case of bonds or other writs heritable, or a confirmed testament, containing the bond or other writ, in case they be moveable, or of a special assignation, though not intimate in the case of either ; which registration shall have the same effect, both as to probation and summar execution, as if the creditor were still on life : And further, it is statute, That if it shall happen the pursuer to decease at any time, during the dependance of any process, raised at his instance, there shall be no need, for hereafter, for his heir, executor or assigney, to raise and obtain a transferring *active* ; but the said heir, executor or assigney, is hereby allowed, upon production of his service or retour, confirmed testament, or special assignation, though not intimate, to insist in the principal cause ; siklike in all respects, as the pursuer, at whose instance the process was raised, might do, if he were still on life, but prejudice to transferrings *passive*, conform to the former pratique as accords.

Erskine, B. III. 3. 42. and IV. 1. 61.

#### DECISIONS.

Lady Mary Bruce *v.* Earl of Kincardine, 28. March 1707,

Mor. 3167.—Johnstone, 4. July 1716, *ibid.* 3170.—Hunter v. Montgomery, 18. Feb. 1782, *ibid.* 3176.

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## DEATHBED.

A settlement of heritage *mortis causa*, to the prejudice of the testator's heir-at-law, must be executed in a peculiar form. And, as a further restraint on the exercise of this power, the deed must have been completed while the testator was in the full possession of his faculties, and not recently before his death. To fix precisely the limits of a testator's power to make such a settlement is the object of the law of deathbed.

The first trace of the law is to be found in the *Regiam Majestatem*, cap. 18, section 7. of which declares, “ Al-  
 “ be it is leisom to ilk man to give ane reasonable portion  
 “ of his lands to whom he pleases, induring his lifetime  
 “ in his *liege poustie*, nevertheless upon his deathbed,  
 “ in the time of sickness in the whilk he deceases, it is  
 “ not permitted for him to do the same. Sect. 8, For  
 “ then, in a little space of time, he might dispone and  
 “ annalzie all his heritage, if such liberty were permit-  
 “ ted to him, who through the great heat and vehe-  
 “ mence of the present sickness, tines memory and judg-  
 “ ment, as sundry times happens to many men. Sect. 9,  
 “ So it may be presumed, if any man being deadly sick  
 “ begins to make dispositions of his lands which, in the  
 “ time of his health, he did not, that he did the same  
 “ by ane trouble of mind, and not by ane sure and cer-  
 “ tain deliberation and advisement. Sect. 10, Never-

“ the less the gift of lands made upon a deathbed not  
 “ by onie man, may be good and lawful, if the same be  
 “ made with the consent of the heir ; or, being made,  
 “ is ratified and confirmed by him.”

Another very general provision, resting on the same ground, is the 13th chapter of the statutes of King William, which is of the following tenor :—“ Lands should  
 “ not be annalziez upon deathbed. No man, in his  
 “ bed of sickness whereof he deceases, in prejudice of  
 “ his heir, may annalzie, nor give to any man his lands  
 “ pertaining to him heritably within or without burgh ;  
 “ nor no lands which he conquest in the time of his  
 “ health. 2. Except he be burdened with debt, so  
 “ that of necessity he is compelled to sell or wadset his  
 “ lands. 3. It is commonly said *necessity has no law*,  
 “ especially when his heir may not, nor will not relieve  
 “ him of his debt.”

These acts are neither very definite nor precise ; and many questions arose in consequence of this defect. To remove obscurity, and to regulate “ deeds done on death-bed,” the act 1696, *cap.* 4, ordains,

That it shall be a sufficient exception to exclude the reason of deathbed, as to all bonds, dispositions, contracts, or other rights, that shall be hereafter made and granted by any person after the contracting of sickness, that the person live for the space of threescore days after the making and granting of the said deeds, albeit during that time they did not go to kirk and mercat ; but prejudice always, as of before, to quarrel and reduce the said rights and deeds, if it shall be alledged and proven, that the person was so affected by the sickness, the time of the doing of the said deeds, that he was not of sound judgment and understanding : As

also, but prejudice to the Lords of Session, to determine as to all bonds, dispositions, contracts, or other rights already made and granted in time of sickness, conform to the former law and custom.

## ACT OF SEDERUNT.

The act of sederunt, 29. Feb. 1692, is in the following terms :

The Lords of Council and Session, taking to their serious consideration, that the excellent law of deathbed, securing men's inheritances from being alienate at that time, may happen to be frustrate and evacuate, if their coming to church or mercate be not done in such a solemn manner as may give some evidence of their convalescence without supposition, or straining of nature : And seeing some may think it sufficient if parties, after subscribing such dispositions, come to the church at any time and make a turn or two therein, though there were no congregation at the time : And likewise, if they make any merchandise privily in a shop or crame, or come to the mercate-place when there is no public mercate ; and all this performed before their own pickt out witnesses, brought by the party in whose favour the disposition is made, that the state and condition of his health or sickness may be as little under the view and consideration of other indifferent persons as can be ; the occasion of which mistake might have been, that formerly there were public prayers, morning and evening, in the church in many places, to which those who apprehended any controversy might arise upon the validity of their dispositions were accustomed to come at the time of prayer, and some thought they might come to the church, though there were no public meeting thereat, since these public prayers were not accustomed, and to take instruments of their appearing there : For remede whereof, the Lords declare, they will not sustain any such



parties going to church and mercate, where it is proven that he was sick before his subscribing of the disposition, quarrelled as done *in lecto*, unless it be performed in the day-time, and when people are gathered together in the church or church-yard for any public meeting, civil or ecclesiastick ; or when people are gathered together in the mercate-place for public mercate: And further declare, whensoever instruments are taken for the end foresaid, that the said instrument do expressly bear, that it was taken in the audience and view of the people gathered together as aforesaid, otherways the Lords will have no regard to the said instrument. Fountainhall, commentary on this act, II. 683. Erskine, B. III. 8. 95. and 96.—Bell, I. 85.

## DECISIONS.

Primrose, 28. Jan. 1756, Mor. 3300.—Thomson, 27. Nov. 1801.—Black v. Brown, 21. Nov. 1816.—Lilly, 3. July 1812.—Black, 11. Dec. 1787, Mor. 3302.—Maitland, 16. May 1815.—Raite v. Black, 27. Nov. 1818.—Lowrie v. Drummond, 7. Feb. 1671, 3319. — Tailzeour, 11. Dec. 1787, Mor. 3317.—Ormiston v. Greig, 17. May 1821.—Ogilvy v. Mercer, &c. 10. Dec. 1793, affirmed on appeal, Mor. 3336.—Mitchell v. Watson, 3. Feb. 1801, Mor. Ap. No. 4. voce "*Deathbed*."—Merry v. Howie, 6. Feb. 1801, *ib.* No. 3. voce "*Writ*," affirmed, 17. March 1806.—Lindsay, 2. Dec. 1819.—Bogle, 19. June 1759, Mor. 3235.—Semple, 1. June 1813.—Colvil, 14. Dec. 1664, *ib.* 15927.—Brown v. Thomson, 15. March 1634, *ib.* 3200.—Campbell v. Rankin, 6. Dec. 1805, *ib.* Ap. No. 5. voce "*Deathbed*."—Creditors of Strachan v. Baldwin, 14. July 1736, 3227.—Leslie, 14. Dec. 1747, 3229. — Logan v. Campbell, 25. Feb. 1757, 3230.—Campbell, 15. Nov. 1757, 3232.—Forbes, 11. Feb. 1755, 3277.—Davidson, 17. Nov. 1687, 3255.—Bertram v. Weir, 8. Feb. 1706, 3258.—Buchanan, Aug.

1758, 3285. — Pringle, 28. Feb. 1765, 3287. — Finlay v. Birkmyre, 29. July 1779, 3188.—Muir v. Lockhart, 1. June 1813.—Coutts v. Crawford, 17. Nov. 1795, 14958. —Rowan v. Alexander, 22. Nov. 1775, 11371.—Moir v. Mudie, 2. March 1820.—Robertson, 15947. — Shaw v. Calderwood, 21. Jan. 1688, 3196.—Kennedy v. Arbuthnot, 13. July 1722, 1681.—Gray, 16. July 1672, 1396 & 3324. — Irvine v. Tait, &c. 3. June 1808, *ib.* App. No. 6. voce “*Deathbed*.” — Paterson’s Trustees v. Johnston, Jury Court, 24. June 1816, Murray, I. 71.—Hiddleston v. Goldie, 12. April 1819, *ib.* II. 120.—Robertson v. M’Caig, 1. Dec. 1823, S. & D. II. 544.

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#### DECLINATURE OF JUDGES.

Partiality in a judge may arise from various causes ; and it may be urged by either of the parties, or by the judge himself, as an objection to his deciding the cause. General averments of solicitation and importunity, or the Judge Ordinary in the Outer-House “ leaving the bench before 12 o’clock to reason and vote in matters depending upon the Inner-House,” though once good grounds of declinature, have long since ceased to be so. But there are two grounds which are still sustained, viz. relationship or enmity to either of the parties.

Mr Erskine, I. 2. 26, states, “ that no restraint was laid on our supreme judges, by the ancient practice, from deciding on the causes of their nearest kinsmen.” But the act 1594, *cap.* 212, declares,

That na senatoures of the College of Justice, ordinar or extraordinar, sall sit, or vote in onie action or cause intended, or to be intended before them, quhair the parties, persewer or defender, is aither their father, brother, or sonne; swa that the father sall in na wise be judge in the sonn's case, the sonne in the father's case, nor the brother in the brother's, bot be declined therein.

And by 1681, *cap.* 13, it is ordained,

That this declinatour shall for the future be farther extended to degrees of affinitie, as well as consanguinity, so that in all time coming, no senatour of the Colledge of Justice, ordinary or extraordinary, shall sit or vote in causes, where the pursuer, or defender, is either father, brother, or son-in-law to him; and also that he shall not sit, or vote, in any cause, where he is uncle, or nephew, to the pursuer or defender: And it is hereby declared, That this act shall be extended to the Lords of Privy Council and Exchequer, and the Commissioners of the Justiciary, and to all other judges and judicatures in the kingdom, who may be declined where they are related to the party, pursuer or defender, in the degrees foresaids.

The act 1555, *cap.* 39, declares,

That na advocacy of causes be taken be the Lords fra the judge ordinar, except it be for deadlie feede, or the schirreffe principal, or the judge ordinar be partie, or the causes of the Lords of Councill and their advocates, scribes and members.

Lord Stair mentions, that "declinators are not competent against any of the Lords (of Session) upon pretence of enmity, hatred, or prejudice against either party; for the Lords are supposed to be men of greater virtue than to entertain such."

## ACTS OF SEDERUNT.

Among the acts of sederunt, those may be first noticed, which relate to the objection of interest in the cause.—A. S. 22. July 1774, related to a declinature moved by some of the judges, that they were related to different partners of a bank in the country not chartered: the declinature was repelled.—A. S. 22. Jan. 1789, related to an election question, in which some of the judges urged a declinature on the ground of their being heritors and electors: but the plea was repelled,—and by A. S. 1. Feb. 1820, it was resolved, that being proprietor in a chartered bank is not a declinature. The other acts of sederunt are, A. S. 6. Nov. 1677, which determines, that receiving a solicitation, unless immediately repelled, or if offered by letter, produced to the Lords, is a relevant ground of declinature.—By A. S. 28. June 1787, the Lords “having considered the act 1681 with “former precedents, find, that affinity in the case of uncle “and nephew is no ground of declinature,”—and in A. S. 16. Feb. 1816, reference is made to an interlocutor finding the affinity of husband of a sister-in-law to be no ground of declinature.

Erskine, I. 2. 24.—Tait's Justice of Peace, p. 102.

## DECISIONS.

Erskine v. Drummonds, 28. June 1787, Mor. 2418.—Binny, 1687, *ib.* 3420.—Goldie, 16. Feb. 1816, F. C.—See Statute 1579, *cap.* 84.

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 DIVORCE ON THE GROUND OF DESERTION.

From the nature and purposes of marriage, it is a maxim of law, that the spouses must adhere and cohabit. To enforce this law, the statute 1573, *cap. 55*, declares,

That in all times bypast, sen the trew and Christian religion was publickly preached, avowed, and established within this realme, namelie, sen the moneth of August, the zeir of God ane thousand five hundreth threescoir zeires, it hes beene, and in all times cumming sall be lauchfull, that quhatsumever person or persones joyned in lauchfull matrimonie, husband or wife, divertis fra uthers companie without ane reasonable cause alledged, or adduced befor an judge, and remainis in their malicious obstinacie be the space of foure zeires, and in the meane time refusis all privie admonitions, the husband of the wife, or the wife of the husband, for dew adherence, that then the husband or the wife sall call and persew the obstinate person offender befor the judge ordinar for adherence; and in case no sufficient causes be alledged, quhairfoir na adherence suld be, bot that the sentence proceedis against the offender refusand to obey the samin, the husband or the wife sall meene themselves to the superior magistrate, *videlicet*, the Lords of Session, and sall obtaine letters in the four formes conforme to the sentence of adherence; whilk charge being contemned, and therefoir being denounced rebell, and put to the horne, then the husband, or the wife, to sute the spiritual jurisdiction and power, and require the lauchfull archbishop, bishop, or superintendent of the countrie, quhair the offender remaines, to direct

privie admonitiones to the said offender, admonishing him or her as befoir for adherence; quhilkes admonitiones, gif he or she contemptuously disobeys, that archbishop, bishop, or superintendent, to direct charges to the minister of that parochin quhair the offender remaines, or in case there be nane, or that the minister will not execute, to the minister of the nixt adjacent kirk thereto, quha sall proceede against the said offender with publick admonitions, and gif they be condemned, to the sentence of excommunication, quhilk anis being pronounced, the malicious and obstinat defection of the partie offender to be ane sufficient cause of divorce, and the said partie offender to tyne and lose their tocher, *et donationes propter nuptias*.

Bankton, I. 5. 134.—Stair, I. 4. 20.—Erskine, I. 6. 44.—Ferguson's Consistorial Reports.

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### DOVECOTES.

The statutory limitation as to the right of erecting pigeon-houses is founded on the legal maxim, that no person is entitled to use his property *in emulationem vicini*.

The act 1617, *cap.* 19, is in these terms :

Our Sovereigne Lord, with advice and consent of the Estates of this present Parliament, considering the great inconvenients sustained by the lieges of this realm, through the frequent building of doucats, by all manner of persons, in all the parts thereof, statutes, declares, and ordaines, that hereafter no person nor persons shall have power, libertie, nor priviledge, to build a doucat upon any lands within this realme, neither within burgh nor in the countrey, except

that person, builder of the doucate, have lands and teinds pertaining to him, extending in yearly rent to ten chalders victual, next adjacent to the said doucate, at the least lying within two miles to the same; and als declares, that it shall nowise be lawful to the person foresaid, worth in yearly rent the foressaids ten chalders victual, to build moe doucates upon, and within the bounds foressaids, except one doucat onely.

## DECISIONS.

Brodie, 3. July 1752, Mor. 3602.—Kinloch, 19. Jan. 1731, *ibid.* 3601.—Murray, 19. Jan. 1797, *ibid.* 7628.

## DUEL.

By the act 1600, *cap.* 12, it was made capital to fight a duel, though no person was killed. And by the act 1696, *cap.* 35, it was made punishable with transportation and escheat of moveables to be concerned in giving, sending, or accepting a challenge; though no fighting ensued. But both these statutes have been repealed by 59. of Geo. III. *cap.* 70.—This crime is now prosecuted as murder at common law.—See Syme's Reports,—Cases of Mr Stuart of Dunearn, High Court of Justiciary, and David Landale, Perth Circuit, 1826.

## EJECTIONS.

When a process of ejection is brought by the true proprietor of an heritable subject against a party who

may have usurped the possession of it without a title, the statute 1594, *cap.* 217, declares,

That in all time cumming, the partie persewed be ane uther for ejection, shall finde caution for the violent profites, as in causes of remooving, the first diet of the litiscontestation, or utherwaies decreete to be given, ordainand the partie to be repossessed.

Erskine, IV. 1. 15.—Stair, IV. 28. See title “*Re-moving of Tenants.*”

## DECISIONS.

Bruce, 21. Nov. 1628, Mor. 3609.—Steill v. Hay, 18. July 1666, *ibid.* 3611.

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ELECTION OF MAGISTRATES. See BURGH ROYAL.

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ELECTION OF MEMBERS OF PARLIAMENT. See PARLIAMENT.

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ENTAILS.

According to Mr Erskine, B. III. 8. 21, a “tailzied” fee, from the French *tailleur* to cut, is a general term, “comprehending all destinations in which the legal course of succession is altered or cut off, and one or other of the heirs-at-law excluded or postponed.”



Assuming this to be a correct definition of the term, every disposition or settlement of heritage *mortis causa*, to the prejudice of the heir-at-law, may be called an entail :— whether the settlement be in favour of one stranger, — to joint disponees,—bestowing a liferent right on one person, and the fee on another,—to husband and wife,—to parent and child,—all deeds, in short, which cut off or qualify the lineal heir's right of succession.

But the term *entail* is more frequently used to denote merely a provision of succession, a deed intended to arrange and settle the destination of an estate to families or individuals in succession, whose rights are contingent or defeasable. Of such deeds there are three different kinds :—1st, A simple destination, whereby an order of heirs is pointed out subject to alteration by any disponee in possession. 2d, A special destination, having prohibitory clauses inserted in the procuratory of resignation, whereby an injunction or personal obligation is laid upon the successive disponees not to interrupt or defeat the order and destination settled by the deed. This form of conveyance does not prevent a transference of the estate to strangers ; but an infringement of the injunction exposes the contravener to an action for damages at the instance of the next disponee whose right is cut off. 3d, A special destination, with prohibitory clauses, and these prohibitions guarded by irritant and resolute clauses, whereby all acts and deeds intended to defeat the order of descent, or to frustrate any of the other conditions, are declared null and void ; and any disponee who so infringes the deed

of entail, is declared to forfeit his or her right to the estate.

In the case of Viscount Stormonth, 25. February 1662, the effect, *at common law*, of a strict deed of entail, prepared according to the third form of conveyance above alluded to, was brought under the consideration of the Court of Session ; and it was sustained against the creditors of the proprietor in possession. But, to prevent the recurrence of any similar discussion, the act 1685, *cap. 22*, declares,

That it shall be lawful to his Majesty's subjects to tailzie their lands and estates, and to substitute heirs in their tailzies, with such provisions and conditions as they shall think fit, and to affect the said tailzies with irritant and resolute clauses, whereby it shall not be lawful to the heirs of tailzie to sell, annailzie, or dispone the said lands, or any part thereof, or contract debt, or do any other deed whereby the samen may be appraised, adjudged, or evicted from the other substitute in the tailzie, or the succession frustrate or interrupted, declaring all such deeds to be in themselves null and void ; and that the next heir of tailzie may, immediately upon contravention, pursue declarators thereof, and serve himself heir to him who died last infest in the fee, and did not contraveen, without necessity any ways to represent the contraveener ; it is always declared, that such tailzies shall only be allowed in which the foresaid irritant and resolute clauses are insert in the procuratories of resignation, charters, precepts, and instruments of seisin ; and the original tailzie once produced before the Lords of Session judicially, who are hereby ordained to interpose their authority thereto, and that a record be made in a particular register-book, to be kept for that effect, wherein shall be recorded the names of the maker of the tailzie, and of the heirs of tailzie,

and the general designations of the lordships and baronies, and the provisions and conditions contained in the tailzie, with the foresaid irritant and resolute clauses subjoyned thereto, to remain in the said register *ad perpetuam rei memoriam*; and for which record, there shall be payed to the clerk of register and his deputes, the same dues as is payed for the registration of seisins; and which provisions and irritant clauses shall be repeated in all the subsequent conveyances of the said tailzied estate to any of the heirs of tailzie; and being so insert, his Majesty, with advice and consent foresaid, declares the same to be real and effectual, not only against the contraveeners and their heirs, but also against their creditors, compryers, adjudgers, and other singular successors whatsoever, whether by legal or conventional titles. It is always hereby declared, that if the said provisions and irritant clauses shall not be repeated in the rights and conveyances, whereby any of the heirs of tailzie shall brook or enjoy the tailzied estate, the said omission shall import a contravention of the irritant and resolute clauses against the person and his heirs who shall omit to insert the same, whereby the said estate shall *ipso facto* fall, accresce, and be devolved to the next heir of tailzie, but shall not militate against creditors, and other singular successors, who shall happen to have contracted *bona fide* with the person who stood infest in the said estate, without the said irritant and resolute clauses in the body of his right: And it is further declared, that nothing in this act shall prejudice his Majesty, as to confiscations or other fines, as the punishment of crimes, or his Majesty or any other lawful superiour of the casualties of superiority which may arise to them out of the tailzied estate, but these fines and casualties shall import no contravention of the irritant clause.

The operation of this act is expressly limited to those deeds of entail which have been prepared according to

the form therein prescribed. It does not support entails generally. Most of the cases under this branch of law relate to omissions of, or imperfect compliance with, the statutory requisites.

The statute 20th of Geo. II. *cap.* 50, declares,

That it shall and may be lawful for any person who is seised in, or possessed of a tailzied estate in Scotland, to sell, dispoñe, or resign, *ad perpetuam remanentiam*, any part thereof, which his Majesty, his heirs, and successors shall think fit to purchase, for erecting of buildings, or making settlements within the same; any law, charter, tailzie, or other act or deed to the contrary notwithstanding.

Provided always, That the monies paid as the price of such land, being part of a tailzied estate, shall be laid out, and settled to the same uses, and with the same limitations and restrictions, as such land was settled before such sale thereof, as aforesaid, or applied for payment of the debts, if any such there be, of the maker of the entail, or other debts that are effectual burdens on the tailzied estate, not being contracted by such vendor himself; and for that purpose, the said money shall be paid into the hands of such trustees, who shall for that purpose be appointed by his Majesty, his heirs, or successors, by sign manual, and the vendors; which payments shall be good discharges to his Majesty, his heirs, or successors, of and from such purchase money; and such trustees, and the survivor and survivors of them, and the executors and administrators of such survivor, shall lay out the same in the purchase of other lands, and settle, and procure to be settled the same, or applied for payment of debts on the same estate, in the manner herein before directed.

And whereas the enfranchising of vassals of subject superiors, by causing them to become immediate vassals of the crown, is a matter of public benefit which ought to be encouraged; be it therefore enacted by the authority aforesaid,

That it shall and may be lawful for any person seised in, or possessed of a tailzied estate in Scotland, comprehending lands or superiorities of vassals, under or holding of him, to sell to such vassals, or any of them, the superiorities over their respective lands, at such prices as the parties shall agree for, and thereupon to resign such lands for new infeftment, to be granted to such buyer of his own superiority, which shall be good and valid, any law, charter, tailzie, or other act or deed to the contrary notwithstanding.

Provided always, That the monies paid as the price of such superiority or superiorities, being part of a tailzied estate, shall be laid out and settled to the same uses, and with the same limitations and restrictions, as such superiority was settled before the sale thereof as aforesaid, or applied for payment of the debts, if any such there be, of the maker of the entail, or other debts that are effectual burdens on the tailzied estate, not contracted by such vendor himself; and for that purpose the monies shall be paid into the hands of trustees, who shall be appointed by the vendor of such superiority or superiorities, and the purchaser or purchasers thereof respectively; and such trustees, and the survivor and survivors of them, and the executors and administrators of such survivor, shall lay out the monies arising from such sale in the purchase of other lands or heretages, and settle, or procure the same to be settled as aforesaid, or such monies to be applied for payment of debts on the tailzied estate, in the manner herein-before directed.

The statute 10. of Geo. III. *cap.* 51, declares,

That it shall and may be lawful to every proprietor of an entailed estate in Scotland to grant tacks or leases of all or any part or parts thereof, for any number of years not exceeding fourteen years from the term of Whitsunday next after the date thereof, and for the life of one person to be named in such tack or leases, and in being at the time of ma-

king thereof, or for the lives of two persons to be named therein, and in being at the time of making the same, and the life of the survivor of them, or for any number of years, not exceeding thirty-one years from the term aforesaid.

II. Provided always, That every such lease for two lives shall contain a clause obliging the tenant or tenants to fence and inclose in a sufficient and lasting manner, all the lands so leased within the space of thirty years, and two-third parts thereof within the space of twenty years, and one-third part thereof within the space of ten years, if the said lease shall continue for such respective terms; and that every such lease for any term of years exceeding nineteen years shall contain a clause, obliging the tenant or tenants to fence and inclose in like manner all the lands so leased during the continuance of such term, and two-third parts thereof before the expiration of two-third parts of such term, and one-third part thereof before the expiration of one-third part of such term.

III. And provided also, That every such lease for two lives, or for any term of years exceeding thirteen years, shall contain a clause obliging the tenant or tenants to keep and preserve the fences, when made, in good and sufficient repair during the lease, and to leave them so at the expiration thereof; and that no inclosures which shall be made shall comprehend more than forty acres in one field, excepting where the lands consist of hills or other grounds incapable or improper by their nature for culture by the plough, in which case the inclosures may be made of such extent as the nature of the ground shall require.

“IV. And whereas the building of villages and houses upon entailed estates may in many cases be beneficial to the public, and might often be undertaken and executed, if heirs of entail were empowered to encourage the same, by granting long leases of lands for the purpose of building,” be it therefore enacted, &c. That it shall be, and it

is hereby declared to be, in the power of every proprietor of an entailed estate, to grant leases of lands for the purpose of building, for any number of years not exceeding ninety-nine years.

V. Provided always, That not more than five acres shall be granted to any one person, either in his own name, or to any other person or persons in trust for him; and that every such lease shall contain a condition that the lease shall be void, and the same is hereby declared void, if one dwelling-house at least, not under the value of ten pounds Sterling, shall not be built within the space of ten years from the date of the lease, for each one half acre of ground comprehended in the lease; and that the said houses shall be kept in good, tenantable, and sufficient repair; and that the lease shall be void whenever there shall be a less number of dwelling-houses than one, of the value aforesaid, to each one-half acre of ground, kept in such repair as aforesaid standing upon the ground so leased.

VI. Provided also, That the power of leasing hereby given shall not in any case extend to, or be understood to comprehend, a power of leasing or setting in tack the manor-place, office-houses, gardens, orchards, or inclosures adjacent to the manor-place, which have usually been in the natural possession of the proprietor, or have not been usually let for a longer term than seven years, when the heir in possession was of lawful age; and that no lease of lands shall be granted, under the authority of this act, for the purpose of building villages or houses within three hundred yards of the manor-place in the natural possession of the proprietor.

VII. Provided always, and be it enacted, That all leases made or to be granted under the authority of this act, shall be made or granted for a rent not under the rent payable by the last lease or sett, and without grassum, fine or foregift, or any benefit whatsoever, directly or indirectly, reserved or



accruing to the granter, except the rent payable by lease; and that no such lease shall be granted till after the end or other determination of any former lease of the same premises; or that such lease, if granted for a time certain, shall be within one year of being determined; and that all leases otherwise granted shall be void and null.

VIII. And be it provided and declared, &c. That if any tailie shall either expressly, or by implication, contain powers of leasing more ample than are hereby given, the heirs of entail in possession shall be at liberty to exercise all such powers, in the same manner as if this act had never been made.

“IX. And whereas it may be highly beneficial to the public, if proprietors of entailed estates were encouraged to lay out money in inclosing, planting or draining, or in erecting farm-houses, and offices or out-buildings for the same, upon their entailed lands and heritages: And whereas such proprietors may be encouraged so to do, if they, their executors and assigns, were secured in recovering a reasonable satisfaction for the money expended in making such improvements, from the succeeding heirs of entail;” be it therefore enacted, &c. That every proprietor of an entailed estate who lays out money in inclosing, planting, or draining, or in erecting farm-houses, and offices or out-buildings for the same, for the improvement of his lands and heritages, shall be a creditor to the succeeding heirs of entail for three-fourth parts of the money laid out in making the said improvements.

X. Provided always, That the sum or sums of money laid out upon such improvements by any one heir of entail during his or her possession, shall not in any case whatsoever be effectual to constitute a claim against the succeeding heir of entail; for more than four years’ free rent of the said entailed estate, after deduction of all public burdens, liferents and interests of debts, which may affect the said estate, as the



same shall happen to be at the first term of Whitsunday after the death of the heir who expended the money claimed.

XI. Provided also, That every proprietor of an entailed estate, who intends to lay out money on such improvements, shall, three months at least before he begins to execute the same, give notice in writing to the heir of entail next entitled to succeed to the said estate after the heirs of the body of the said proprietor, if within Great Britain or Ireland, and if the heir next entitled to succeed is not within Great Britain or Ireland, shall give notice in writing to the nearest male relation by his father of lawful age, or to his known factor or attorney, of such his intention, specifying in such notice the kind of improvement intended, and the farms or parts of the estate upon which the improvements are intended to be made; and shall lodge a copy thereof with the sheriff or steward clerk of the county wherein the lands lie.

XII. Provided also, That the proprietor of an entailed estate, who lays out money in making improvements upon his entailed estate, with an intent of being a creditor to the succeeding heirs of entail in the manner above expressed, shall annually, during the making such improvements, within the space of four months after the term of Martinmas, lodge with the sheriff or steward clerk of the county within which the lands and heritages improved are situated, an account of the money expended by him in such improvement during twelve months preceding that term of Martinmas, subscribed by him, with the vouchers by which the account is to be supported when payment shall be demanded or sued for.

XIII. Provided also, and be it further enacted, That when a sum equal to four years' free rent shall have been laid out, in manner above mentioned, by one or more heir or heirs of entail, and shall remain a subsisting charge against the succeeding heirs, it shall not be lawful for any sub-

sequent heir or heirs to lay out any more money under the authority of this act, for any of the improvements aforementioned.

XIV. And be it enacted, &c. That all sheriff or steward clerks, with whom the accounts, vouchers, and copies of notices shall be lodged, shall, within the space of one month thereafter, record them in a book to be kept for that purpose, and return them when called for; and shall make the book patent to all persons desirous to see the same; and shall give certified copies or extracts of all accounts, vouchers, and copies of notice recorded, they receiving for their trouble the usual fees for recording writings and giving out extracts, and sixpence Sterling from each person who shall have inspection of the book wherein the accounts, vouchers, and copies of notice shall be recorded.

XV. And be it enacted, &c. That the executor or executors, assignee or assigns, or other person or persons having right to the claim arising from money expended by the proprietor of an entailed estate in the improvement thereof, may, after the expiration of one year from the death of the heir who expended the money, require the heir next succeeding to the estate, to pay such part thereof as is due by the authority of this act, with the legal interest, from the term at which the succeeding heir's right to the rents of the estate did commence, upon receiving a proper discharge and assignment of the said claim; and if the money is not paid within three months of such requisition, it shall then be lawful for the person or persons having right, to institute an action in the Court of Session against the heir then in possession, for compelling him to pay the money, and interest thereof; and upon obtaining a decree, he, she, or they shall be at liberty to use every kind of diligence or execution authorised by the law of Scotland in recovering payment of debts, excepting adjudication against the entailed estate improved; and in all questions of competition for the rents of

the entailed estate, the person or persons having right to such decree shall be preferred to the other creditors of the heir of entail who has succeeded to the estate.

XVI. Provided always, That when any heir in possession is sued for money due on account of improvements made upon an entailed estate under the authority of this act, he shall be discharged in all cases from such suit, upon his assigning and effectually conveying to the creditor or creditors one-third part of the clear rents of the entailed estate during his life, or until the money so due shall thereby be paid off.

“XVII. And whereas it may happen that the heir of entail who next succeeds the proprietor who expended the money in the improvement of the entailed estate, may die, before the money due by him on account of improvements made upon the estate is paid, by which the person or persons in the right of the money due may be embarrassed in recovering payment:” For remedy whereof, be it enacted, That the person or persons in the right of the money due, may either sue the heirs and successors of the said next heir of entail in any other than the entailed estate, or the heir of entail next succeeding to him, or both, and use every kind of diligence or execution, authorised by the law of Scotland, in the recovering payment of debts, against them and their estates, excepting adjudication against the entailed estate, until the money is fully satisfied and paid; and the person or persons in the right of the money shall, in any competition for the rents of the entailed estates, be preferred to the personal creditors of the heir of entail in possession; and the person or persons in the right of the money due shall in like manner be entitled to sue every succeeding heir of entail, until the money is satisfied and paid, and shall have the same preference to the rents of the entailed estate in competition with the creditors of such heirs of entail.

XVIII. Provided always, and be it enacted, &c. That the

heir who next succeeds in the entailed estate to the proprietor who expended the money, under the authority of this act, in making improvements upon the estate, and the heirs and successors of such heir, shall be bound to relieve all subsequent heirs of all or such part of the debt, incurred by the improvement of the estate, under the authority of this act, as shall be paid by them, to the extent of one-third part of the rents which have come to the use of such first succeeding heir, or to the use of his heirs or executors; and when the third part of the rents which have come to the use of the first succeeding heir, or to his heirs or executors, are exhausted, then the next succeeding heir, and his heirs and successors, shall in like manner be bound to relieve all subsequent heirs, to the extent of one-third part of the rents which have come to their use; and relief shall in like manner be competent to every succeeding heir who shall pay against the heirs and successors of the preceding.

XIX. Provided also, and be it enacted, &c. That when the heirs and successors of an heir of entail in any other than the entailed estate are sued for the money due on account of improvements made upon an entailed estate under the authority of this act, they shall be discharged in all cases from such suits, upon making payment of one-third part of the rents of the entailed estate which have come to the use of such heir of entail, or to the use of his said heirs or successors.

“XX. And whereas inconveniences and confusion might arise from the executor, assignee or other person or persons having right to the claim arising from money expended by the proprietor of an entailed estate in the improvement thereof, their not timeously requiring the heir next succeeding in the estate to pay what they are entitled to receive by authority of this act, and suing such heir to compel him to pay, if payment is not made;” for remedy whereof, be it enacted, That the executor, assignee, or other

person or persons having right to the claim arising from money expended by the proprietor of an entailed estate in the improvement thereof, shall be obliged, within the space of two years after the death of the proprietor who expended the money, to require payment from the succeeding heir; and within the space of six months after the elapse of the said two years, to institute an action, if the money is not paid, in the Court of Session; and to proceed without delay in recovering a decree for the sum due, and doing exact diligence for recovering payment thereof, or at least to the amount of one-third part of the free rents of the estate which shall have become due to such succeeding heir.

XXI. Provided always, and be it enacted, &c. That the executor, assignee, or other person or persons, having right to the claim arising from money expended by the proprietor of an entailed estate, who shall neglect to require the next or any other succeeding heir or heirs to pay, and shall allow such succeeding heir or heirs to die without recovering payment from him or them to the amount of one-third part at least of the rents that shall have become due to such heir or heirs, shall cease to be creditor to the subsequent succeeding heir or heirs respectively, to the extent of one-third part of the rents which shall have become due to the heir or heirs so deceasing as aforesaid; and shall be entitled to recover payment of his claim, to the extent of such third part of the rents, from the executors or heirs only of the first or any other succeeding heir or heirs in any other estate than the entailed estate; and shall be entitled to recover payment of the surplus of his claim, if any be, and no more, from the subsequent succeeding heir or heirs respectively.

“XXII. And whereas it may happen that the heir who  
“next succeeds to the proprietor who expended money in  
“making improvements upon an entailed estate, may pay all  
“or part of the money due on account of such improve-  
“ments, and may not live so long as to be indemnified by

“ the third part of the rents which shall come to his use, or “ to the use of his heirs or executors;” be it therefore enacted, &c. That if the heir who first succeeds in the entailed estate to the proprietor who expended the money, does pay all or part of the money due on account of the improvements made, and shall not live long enough to be indemnified of what he pays by one-third part of the rents that shall come to his use, or to the use of his heirs or executors; it shall be competent to his executors or assigns to sue the succeeding heir of entail for relief of such part of the money as shall not be repaid by the third part of the rents which have come to his use; or to the use of his heirs or executors, and relief shall, in like manner, be competent to the executor or assigns of every heir of entail who pays more than is repaid by the third part of the rents which have come to his use, or to the use of his heirs or executors.

XXIII. And be it further enacted by, &c. That no money expended in making improvements upon an entailed estate, for which a decree shall be obtained in the Court of Session, shall be made use of as a ground of debt for adjudging the estate upon which the improvements have been made; and if any decree of adjudication shall be obtained against the entailed estate for such debts, every such decree shall, and is hereby declared to be void.

XXIV. And be it enacted, &c. That if the heir of entail who shall succeed to the entailed estate upon which improvements have been made, shall have right to a claim of debt arising from the making of such improvements as next of kin, or by the will or settlements of the heir of entail who expended the money, in every such case the claim of debt shall, and is hereby declared to be extinguished for ever, and shall never be set up as a debt against any succeeding heir.

XXV. And be it further enacted, &c. That if any heir of entail, against whom a debt is created for improvements

made in the entailed estate to which he succeeds, shall refuse to pay the money required of him under the authority of this act, and that decree shall be obtained against him for the whole of the sum or sums of money of which he shall be required to make payment; in every such case the defender shall be liable in full costs of suit; and if decree is not obtained for the full sum or sums of money of which payment has been required, it shall be in the discretion of the Court to award costs of suit to either party, as the justice of the case shall direct.

XXVI. " And whereas questions may arise concerning " the amount of the sums laid out under the authority of this " act, at a great distance of time, when the material witnesses may be dead; for remedy whereof, and for ascertaining in due time the amount of the sums so expended," be it therefore further enacted, That it shall and may be lawful for every heir of entail, after he shall have laid out money upon the improvement of his entailed estate, as aforesaid, and shall have completed the improvement of all or any particular part of such estate, to bring, if he shall think proper, an action of declarator before the Court of Session, or a process before the sheriff, in which he shall call the heir next entitled to succeed after the heirs of his own body, and shall in such suit produce proper evidence of the money laid out in such improvements; and the said next heir, or any other heir of entail, shall be entitled to produce proper evidence to set aside or diminish such claim; and it shall and may be lawful for the said Court of Session, or for the said sheriff, to pronounce a decree for such part of the said sum as, by the true intent and meaning of this act, is intended to become a charge against the succeeding heirs in the said entailed estate; which decree, if pronounced by the sheriff, shall become final, unless carried to the Court of Session by suspension within six months after the same shall have been pronounced; and if pronounced by the Court of Session,

either in such process of declarator or suspension, shall be final, if an appeal is not brought within twelve months.

“ XXVII. And whereas it frequently happens that there  
“ are not upon entailed estates, mansion-houses and offices  
“ suitable to the estates, and fit for the accommodation of the  
“ heirs of entail, and that mansion-houses and offices upon  
“ entailed estates are sometimes destroyed by fire, or from  
“ other accidental causes, or become insufficient by length  
“ of time; and it being beneficial to the public to encourage heirs of entail in such cases to build houses and offices  
“ suitable to their estates, and fit for the accommodation of  
“ their families:” Be it therefore enacted, &c. That every heir of entail who lays out money in building a mansion-house or offices, or in repairing or adding to the mansion-house or offices upon his estate, shall be a creditor to the next succeeding heir of entail for three-fourth parts of the money expended by him.

XXVIII. Provided always, That the sum or sums of money laid out by any one heir of entail, in the building a mansion-house or offices, shall not, in any case whatever, be effectual to constitute a claim against the succeeding heir of entail for more than two years’ rent of the said entailed estate, after deduction of all public burdens, liferents, and interest of debts, which may affect the said estate, as the same shall happen to be at the first term of Whitsunday after the death of the heir who expended the money claimed.

XXIX. Provided also, That the proprietor of the entailed estate, who lays out the money, shall previous thereto give notice in writing to the heir of entail next entitled to succeed to the said estate after the heirs of his own body, and record copies of the same, together with the accounts of the money expended, and the vouchers thereof, in the sheriff or steward court-books of the county within which the mansion-houses and offices are situated, in the form and manner above



directed with regard to monies expended in making improvements on entailed estates.

XXX. And be it enacted, That the executor or executors, assignee or assignees, or other person having right to the claim arising from money expended by the proprietor of an entailed estate, in the building a mansion-house or offices; or in the repairing or adding to the mansion-house or offices upon his estate, may, after the expiration of one year from the death of the heir who expended the money, require the heir next succeeding to the estate to pay the whole, or such part thereof as is due by the authority of this act, with the legal interest from the term at which the succeeding heir's right to the rents of the estate did commence, upon receiving a proper discharge and assignation of the said claim; and if the money is not paid within three months of such requisition, it shall be lawful for the person or persons having right, to sue the next succeeding heir, in the manner above directed, for the recovery of money expended in the improvement of entailed estates.

XXXI. And be it further enacted, That the same rules of relief among succeeding heirs of entail, and their heirs and successors of the claim of debt, and of preference in competition for rents, and in subjecting defenders to the payment of costs, and for ascertaining the amount of the sum laid out, shall take place with regard to monies expended in the building, repairing, or adding to the mansion-houses or offices upon entailed estates under the authority of this act, as are before enacted, with respect to monies expended by proprietors of entailed estates, in making improvements upon their estates for increasing the rents and value of them.

“ XXXII. And whereas it may frequently happen, that  
“ the inclosing of lands in Scotland may be retarded or pre-  
“ vented, or at least rendered inconvenient, by heirs of en-  
“ tail not having it in their power to exchange small parcels  
“ of the lands of their entailed estates, for other lands con-

“ venient for the entailed estate, and more conducive to the “ improvement of the country in general:” For remedy whereof be it enacted, That it shall and may be lawful for proprietors of entailed estates, to excamb or make exchanges of land with all and every person or persons for the convenience and advantage of the said estates, and for the improvement of the country where such estates are situated, by inclosing or otherwise.

XXXIII. Provided, That not more than thirty acres of arable land, nor more than one hundred acres of land consisting of hills or other grounds incapable or improper by their nature for culture by the plough, of such entailed estates lying together in one place or plot, shall be given in exchange; and that an equivalent in land, contiguous to the entailed estate with which the exchange is to be made, shall be received in place of the land given in exchange: And for ascertaining and adjusting the value of the lands proposed to be exchanged, an application shall be made for that purpose, by the proprietor of the entailed estate, to the sheriff or steward of the county within which the entailed estate is situated, who thereupon shall appoint two or more skilled persons to inspect and adjust the value of the lands proposed to be excambed or exchanged; and upon such person's settling the marches of the lands proposed to be exchanged, and reporting upon oath that the exchange will be just and equal, the sheriff or steward may, and is hereby required, to authorise the exchange to be made by a contract of excambion; and which being executed and recorded in the sheriff or steward books within three months after the execution thereof, the same shall be effectual to all intents and purposes; and the land given in exchange to the entailed estate shall be held to be a part thereof, and shall be subject to all the prohibitory, irritant and resolute clauses of the entail, in the same manner as if it had been originally a part of the estate; and the lands given from the entailed estate shall from thenceforth be held as out of the entail, and be libe-

rated from all the prohibitory, irritant and resolute clauses thereof.

XXXIV. And be it further enacted and declared, That this act shall extend to, and comprehend all tailies of lands or heritages in Scotland, made or to be made, and whether prior or posterior to the said act made in the year 1685.

In the several statutes authorising proprietors to redeem their land-tax, it is declared, that heirs of entail may sell *part* of the tailzied estate to enable them to purchase the land-tax of the *whole*. If the proceeds of such sale amount to a larger sum than is required for this purpose, the surplus is directed to be invested in the purchase of other lands, to be placed under the conditions of the original entail; but, if they do not amount to the sum required, the necessary addition may be borrowed on the security of the remainder of the entailed estate.

The statute 5. Geo. IV. *cap.* 87, “ to authorise the  
“ proprietors of entailed estates in Scotland to grant  
“ provisions to the wives or husbands and children of  
“ such proprietors,” is in these terms :

“ I. Whereas by an act of the Parliament of Scotland  
“ made in the year 1685, intituled, Act concerning tailzies,  
“ it is statuted and declared, That it shall be lawful to his  
“ Majesty’s subjects to tailzie their lands and estates with  
“ such provisions and conditions as they shall think fit, and  
“ to affect the said tailzies with irritant and resolute clauses,  
“ which tailzies, when completed and recorded in manner by  
“ the said act directed, are declared to be real and effectual  
“ against creditors, comprisers, adjudgers and other singular  
“ successors whomsoever : And whereas, by an act of  
“ Parliament, passed in the tenth year of the reign of his

“ late Majesty King George the Third, intituled, An act to  
“ encourage the improvements of lands, tenements and he-  
“ reditaments in that part of Great Britain called Scotland,  
“ held under settlement of strict entail, the proprietors of  
“ entailed estates in Scotland were empowered to burden  
“ their estates, and the subsequent heirs of entail, for the im-  
“ provement of their entailed estates, in manner specified  
“ in that act; and whereas sundry entails of lands and es-  
“ tates in Scotland contain no powers in regard to the grant-  
“ ing of provisions to the wives or husbands and children  
“ of the proprietors thereof; and in many other entails, by  
“ reason of the change of the value of money, the improved  
“ value of lands and estates in Scotland, and other causes,  
“ the powers of granting provisions to the wives or hus-  
“ bands and children of the proprietors of such entailed es-  
“ tates have become entirely inadequate for these purposes;  
“ and it has become expedient, that the powers of granting  
“ such provisions should be conferred or enlarged, as the  
“ case may be, under certain regulations and conditions,  
“ in all entails already made or hereafter to be made:” Be  
it enacted, That it shall and may be lawful to every heir of  
entail, in possession of an entailed estate, under any entail  
already made or hereafter to be made, in that part of Great  
Britain called Scotland, under the limitations and conditions  
after mentioned, to provide and infest his wife in a liferent  
provision out of his entailed lands and estates by way of  
annuity: Provided always, that such annuity shall not ex-  
ceed one-third part of the free yearly rent of the said lands  
and estates, where the same shall be let, or of the free year-  
ly value thereof, where the same shall not be let, after deduct-  
ing the public burdens, liferent provisions, the yearly interest  
of debts and provisions, including the interest of provisions  
to children herein-after specified, and the yearly amount of  
other burdens of what nature soever affecting and burden-  
ing the said lands and estates or the yearly rents or proceeds

thereof, and diminishing the clear yearly rent or value thereof to such heir of entail in possession, all as the same may happen to be at the death of the granter.

II. And be it further enacted, That it shall and may be lawful to every heir female in possession of such entailed estate as aforesaid, to provide and infest her husband in a life-rent provision out of her entailed lands and estates by way of annuity; provided always, that such annuity shall not in any case exceed one-half of the free yearly rent or free yearly value as aforesaid of the whole of the said lands and estates, after all deductions to be made from the same in manner before mentioned: but in case the said lands and estates shall already be burdened with a prior existing annuity granted by a wife or husband under the authority of this act, the annuity to be granted to a husband in manner before mentioned shall not exceed one-third part of the said yearly rent or yearly value to be taken as aforesaid.

III. Provided always, and be it enacted, That where two life-rents to wives or husbands granted under the powers herein-before contained, shall be subsisting at any one time upon an entailed estate, it shall not be competent to grant a third life-rent to take effect till one of the former subsisting life-rents shall cease or expire; but the power of granting a life-rent may be exercised so as to increase a former life-rent, or grant a new life-rent to the extent herein-before authorised to be granted upon the ceasing or expiration of any former or subsisting life-rent, although the same may not take place in the lifetime of the person granting such prospective or increased life-rent.

IV. And be it further enacted, That it shall and may be lawful to the heir of entail in possession of any such entailed estate as aforesaid, to grant bonds of provision or obligations, binding the succeeding heirs of entail in payment, out of the rents or proceeds of the same, to the lawful child or lawful children of the person granting such bonds or obli-

gations; who shall not succeed to such entailed estate, of such sum or sums of money, bearing interest from the granter's death, as to him or her shall seem fit: Provided always, that the amount of such provision shall in no case exceed the proportions following of the free yearly rents or free yearly value of the whole of the said entailed lands and estates, after deducting the public burdens, liferent provisions, including those to wives or husbands authorised to be granted by this act, the yearly interest of debts and provisions, and the yearly amount of other burdens of what nature soever, affecting or burdening the said lands or estates, or the yearly rents or proceeds thereof, and diminishing the clear yearly rent or yearly value thereof as aforesaid to the heir of entail in possession; (that is to say,) for one child, one year's free rent or value; for two children, two years' free rent or value; and for three or more children, three years' free rent or value in the whole: Provided always, that such provision shall, except in the case of the settlement thereof by a marriage-contract as herein-after mentioned, be valid and effectual only to such child or children as shall be alive at the death of the granter, or to the child or children of which the wife of the granter shall be then pregnant; and upon any such child succeeding to the entailed estate, the provision granted to him or her, in so far as not previously paid, shall be extinguished for ever, and shall never be set up as a debt against any succeeding heir.

V. Provided always, and be it further enacted, That if any child to whom any such provision as aforesaid may be granted shall marry, and that such provision, or any part thereof, shall, with the consent of the granter of the same, be settled in the contract made in consideration of the marriage of such child, and such child so marrying shall die before the granter of such provision, then and in all such cases the provision, or any part thereof, so settled in consideration of such marriage, shall remain and be effectual, as if such child had survived the granter.

VI. Provided always, and be it enacted and declared, That where the powers herein-before contained of granting provisions to a child or children shall have been exercised by one or more heir or heirs in possession of any such entailed lands and estates as aforesaid, to the full extent of three years' free rent or value of the entailed estate as aforesaid, it shall not be in the power of any heir, in possession of the same lands and estates, to grant further provisions to his or her child or children, till some part of the provisions granted to the extent of three years' free rent or value as aforesaid shall have been paid or extinguished; but upon the payment or extinction thereof, or of any part thereof, it shall be in the power of such heir in possession to grant provisions to his or her child or children to the extent of the provisions so paid or extinguished as aforesaid; the heir in possession of any such entailed lands and estates as aforesaid being always hereby empowered to grant provisions to his or her child or children, to such extent of the power of granting provisions to a child or children herein-before contained, as may be open or unexercised for the time, so that the provisions to be granted do not in any case exceed the proportions aforesaid, of one year's free rent or value for one child, of two years' free rent or value for two children, and of three years' free rent or value for three or more children: And provided always, that such provision shall (except in the case of the settlement thereof by a marriage-contract as herein-before mentioned,) be valid and effectual only to such child or children as shall be alive at the death of the granter, or to the child or children of which the wife of the granter shall be then pregnant; and that upon any such child succeeding to the entailed estate, the provision granted to him or her, in so far as not previously paid, shall be extinguished for ever, and shall never be set up as a debt against any succeeding heir.

VII. Provided always, and be it enacted; That in every

case in which the provision granted to a wife or husband, or to a child or children, under the authority of this act, shall exceed such proportions of the rent or value of any such entailed estate as herein-before mentioned, such provision shall not be deemed to be null and void, but the same shall be voidable at the instance of the heir of entail next in the order of succession, or of any other heir of entail, to such extent as such provision shall exceed those herein authorised in each respective case to be granted, but no further; and the Court of Session, in either division thereof, is hereby authorised and required to make the necessary order to that effect, on advising a petition to be presented to that Court by the heir of entail next in the order of succession, or any other heir of entail.

VIII. Provided always, and be it further enacted and declared, That no securities or provisions to be granted under the authority of this act to a wife or husband, or to a child or children of the proprietors of any such entailed lands and estates as aforesaid, shall affect, or be made by any process of law whatsoever to affect, the fee of the same lands and estates, but such securities and provisions shall only affect the yearly rents or proceeds of the said lands and estates.

IX. And be it enacted, That after the expiration of one year from the death of the granter of such provisions to children as aforesaid, it shall and may be lawful for the person or persons having right to the same, to require the heir succeeding to the estate to make payment of the said provisions, with the legal interest thereof, from the term at which the right of such succeeding heir to the rents of the estate did commence, after receiving a proper discharge thereof, or assignment to the same; and if the money shall not be paid within three months after requisition of payment shall be made as aforesaid, it shall then be lawful for the person or persons having right to any such provision to institute an action in the Court of Session against the heir then in pos-



session, for compelling him or her to pay the money and interest thereof; and on obtaining a decree, the person or persons in whose favour decree shall be made, shall be at liberty to use every kind of diligence or execution authorised by the law of Scotland, in recovering the payment of debts, except adjudication, against the entailed estate.

X. And be it enacted, That in case any heir in possession of an entailed estate shall be sued for payment of the provisions granted under the authority of this act, to the child or children of any former heir or heirs, he or she shall be discharged in all cases from such suit, upon assigning or effectually conveying to a trustee, to be named by the Court of Session, one-third part of the clear rents or proceeds of the entailed estate, payable to such heir in possession during his or her life, or until the provisions aforesaid shall be paid off; and the rents so assigned and conveyed shall be applied in payment of the whole subsisting provisions to a child or children, granted under the authority of this act.

XI. And be it further enacted and declared, That for and notwithstanding of any clause prohibitory, irritant or resolutive, proviso, matter or thing in any deed of entail contained to the contrary, no proprietor of any entailed estate in Scotland shall be held to have committed any contravention, or to have incurred any irritancy or forfeiture, for or by reason of such proprietor having granted any of the provisions upon or out of an entailed estate herein-before authorised to be granted.

XII. And be it further enacted, That nothing herein contained shall be held or construed to diminish the powers of the heir in possession of any such entailed estate in Scotland as aforesaid, in regard to the granting of provisions to his or her wife or husband, or to his or her child or children, if empowered by the deed of entail under which he or she shall hold such entailed estate, to grant provisions to a larger extent than those herein-before specified; but it shall not be

lawful in any case to grant any such provision as is herein-before authorised to be granted, in addition to any provision authorised to be granted to a wife or husband, or to a child or children, under any deed of entail, so as to exceed in the whole the proportions of the yearly rent or yearly value of any entailed estate herein-before mentioned, and authorised to be granted for making such provisions as aforesaid.

XIII. And be it enacted and declared, That the powers given and granted by this act, and by the said recited act of the tenth year of the reign of his said late Majesty, shall in no case be exercised to such an extent as to deprive the heir in possession of any entailed lands and estates in Scotland, of more than two-third parts of the free yearly rent or free yearly proceeds of the same; and the Court of Session, in either division thereof, is hereby authorised and required, in each respective case, to give all necessary orders for relieving the heir in possession from the payment of more than such two-third parts of the said free yearly rent or yearly proceeds as aforesaid, by authorising such heir to retain any excess beyond the same, from the security or provision, or securities or provisions on such entailed lands and estates, which shall be least entitled by the law of Scotland to legal preference.

Sandford on the Law of Entail.

DECISIONS—ACT 1685.

Baillie v. Sutherland, 26. Feb. 1801, Mor. App. No. 8, voce "*Tailzie*."—Lockhart v. Stewart, 11. July 1811.—Mac-lachlan, 27. Jan. 1768, 15421. — Dillon, 14. Jan. 1780, 15432. — Spittal, 3. Aug. 1781, 15617. — More, 2. Feb. 1753. — Ker v. Duke of Roxburgh, 5. and 7. July 1804, 14984. — Creditors of Hepburn v. the Children, 8. Feb. 1758, 15507.—Creditors of Humble, 8. Feb. 1758, affirmed. — Henderson, 21. Nov. 1815. — Paterson v. Broomfield, 29. June 1784, 15618.—M'Donald v. Chisholm, 27.

Feb. 1800, App. No. 6, *voce* "*Tailzie*."—*Syme v. Dewar*, 1. Feb. 1803, 15619.—*Creditors of Douglas*, 22. Feb. 1765.—*Grant v. Gordon*, and *Russell v. Pearce*, 31. Jan. 1792, Mor. 10300.—*Creditors of Smollet*, 14. May 1807, App. No. 12, *voce* "*Tailzie*."—*Ferrier v. Duke of Roxburgh*, 10. Dec. 1813.—*Stewart v. Agnew*, 5. March 1784, reversed, 31. July 1822.—*Dickson*, 10. March 1786, 15534.—*Campbell*, 29. Nov. 1815.—*Gordon v. Hay*, 8. July 1777, App. No. 2, *voce* "*Tailzie*."—*Wellwood v. Preston*, 31. May 1797, 15466.—*Steele v. Duncan*, 12. May 1814.—*Scott Moncrieff v. Cuninghame*, 8. March 1804, affirmed, 20. July 1804.

ACT 10. GEO. III. C. 51. § 9.

*Rae*, 5. Feb. 1760, Mor. 15216.—*M'Dowall*, 17. Dec. 1760, 15259.—*Arbuthnot*, 5. Feb. 1772, 10424.—*Morison*, 3. Feb. 1787, 10425.—*Bell*, 14. June 1814, F. C.—*Tod*, 14. Jan. 1822, S. & D. II. 113.—*Scott Nisbet v. Young*, 16. Nov. 1773.—*Fraser Tytler*, 9. March 1826, S. & D. IV. 541.

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EPISCOPALIANS.

After the episcopal form of government was abolished from Scotland, those who professed this mode of worship were much molested by presbyterians. For the protection of all persons of the episcopal persuasion in Scotland, the act 10. of Q. Anne, *cap.* 6, declares,

That it shall be free and lawful for all those of the episcopal communion in that part of Great Britain called Scot-

land, to meet and assemble for the exercise of divine worship, to be performed after their own manner by pastors ordained by a protestant bishop, and who are not established ministers of any church or parish, and to use in their congregations the liturgy of the Church of England, if they think fit, without any let, hindrance, or disturbance from any person whatsoever; and all sheriffs of shires, stewards of stewartries, and magistrates of boroughs, and justices of the peace, are hereby strictly required to give all manner of protection, aid, and assistance to such episcopal ministers, and those of their own communion, in their meetings and assemblies for the worship of God, held in any town or place, except parish-churches, within the extent and jurisdiction of that part of Great Britain called Scotland.

Provided always, and be it enacted by the authority aforesaid, That none shall presume to exercise the function of a pastor in the said episcopal meetings and congregations, except such as shall have received holy orders from the hands of a protestant bishop; and that every person who shall be called or appointed to be a pastor or minister of any episcopal congregation or assembly, before he take upon him to officiate as pastor of the said congregation, be hereby obliged and required to present his letters of orders to the justices of peace, at their general or quarter-sessions to be held for the shire, stewartry, city, town, or other place in which the said episcopal congregation is or shall be; and that the said letters of orders be there entered on record by the register or clerk of the said meeting of the justices, for which there shall be no greater fee or reward taken than the sum of one shilling.

And be it further enacted by the authority aforesaid, That all ministers of the Established Church of Scotland, and all and every person and persons, who is or are pastor or pastors, minister or ministers of any episcopal congregation in Scotland, shall be obliged, and are hereby required, on or

before the 1st day of August next to come, to take and subscribe the following oaths, in such manner, and under such penalties, as all officers, civil and military, in Scotland are obliged to take the oath recited in the fourteenth act of the sixth year of her Majesty's reign, (intituled, An act for the better security of her Majesty's person and government): And that all ministers of the Established Church of Scotland, hereafter to be admitted into their respective churches or benefices, and all and every person and persons, who shall hereafter be pastor or pastors, minister or ministers of any episcopal congregation, shall, before such admission or exercise of their respective functions, be obliged to take and subscribe likewise the following oaths, in the same manner, and under the same penalties above mentioned.

The act 19. of Geo. II. *cap.* 38, " more effectually to prohibit and prevent pastors or ministers from officiating in episcopal meeting-houses in Scotland, without duly qualifying themselves according to law, and to punish persons from resorting to any meeting-houses where such unqualified pastors or ministers shall officiate," declares,

That all and every the sheriffs of shires, stewards of stewartries in Scotland, and their deputies, and the magistrates of royal boroughs, shall, and they are hereby authorised and strictly required, with all convenient speed, on or before the first day of November, in the year of our Lord 1748, to inquire, by examination of witnesses upon oath, or other credible information, into the number and situation of the episcopal meeting-houses within their respective jurisdictions, and shall cause lists to be made of the same, and to be entered and inserted in a book which shall be provided and kept for that purpose, by the clerks belonging to their jurisdictions respectively, and shall forthwith transmit true copies thereof

to the clerk of each House of Parliament, to be laid before the said Houses respectively at their next meeting.

And be it further enacted by the authority aforesaid, That every person who now is pastor or minister of any episcopal congregation of Scotland, shall, and he is hereby required, on or before the first day of September, in the year of our Lord 1746, to produce to the clerk of the shire, stewartry, or borough where his meeting-house is situated, a certificate from the proper officer, of his having qualified himself by taking the oaths to his Majesty appointed by law, of which certificate the clerk shall forthwith make an entry in the said book appointed for keeping a list or register of the meeting-houses within that jurisdiction; which entry shall express the name of the minister whom the certificate concerns, and the situation and description of the meeting-house where he officiates as minister or pastor; copies of which entries shall likewise be transmitted by the said clerk to the clerk of each House of Parliament for the purpose aforesaid; and the said clerk of such shire, stewartry, or borough, shall likewise deliver two attested copies of such certificate to such pastor or minister, one of them to be by him fixed on the outside of the meeting-house where he shall officiate, on or near the door thereof, and the other in some conspicuous place within such meeting-house; for each of which last-mentioned copies, the sum of sixpence Sterling shall be paid, and no more.

And be it further enacted by the authority aforesaid, That every pastor or minister who shall, at any time after the said first day of September, officiate in any episcopal meeting-house or congregation, shall, as often as he shall so officiate, at some time during the exercise of divine service in such episcopal meeting-house or congregation, pray for the King's most excellent Majesty, his heirs or successors, by name, and for all the Royal Family, in the same form of words as his Majesty, his heirs or successors, and the Royal

Family, are or shall be directed by lawful authority to be prayed for in the prayers for the Royal Family, contained in the liturgy of the Church of England.

And be it further enacted, That the said sheriffs, stewards, and their deputies, and magistrates of boroughs, shall be obliged, and they are hereby strictly enjoined and required, immediately after the 1st day of November, forthwith to shut up, or cause to be shut up, the doors of the meeting-houses, or other places where such episcopal assemblies or meetings have been or shall be held, whereof the pastor or minister shall not have produced to their clerks respectively the certificate of his having been qualified as aforesaid, or wherein his Majesty, his heirs or successors, and the Royal Family, shall not be prayed for in express words, in the manner before directed; and shall not again give access to the said houses, or other places of meeting, until the proprietor, tenant, or possessor thereof shall enact himself, with one or more sufficient sureties, in the court books of the said sheriff, steward, or royal borough, under the penalty of one hundred pounds Sterling money, to be paid to the said judges or magistrates, for the use of his Majesty, that he or she shall not permit or suffer such house or place to be employed or made use of as an episcopal meeting-house, by any pastor or minister not qualifying himself as aforesaid, and conforming to the regulations before mentioned, at any time thereafter, during such time as he or she shall continue proprietor, tenant or possessor thereof.

And be it further enacted, That if any person shall, from and after the said first day of September, presume to enter upon, or exercise the function of a pastor or minister of any episcopal meeting or congregation in Scotland, without having first caused his letters of orders to be entered on record, or registered, or without having first qualified himself by taking and subscribing the oaths, in such manner as all officers, civil and military, in Scotland, are by law obliged to take and subscribe the same, or without having first pro-

duced, and caused to be entered, in the manner herein-before directed, in the books to be kept by the clerk of the sheriff, steward, or borough courts respectively where such person proposes to officiate as a pastor or minister, his name and place of abode, and the place where his meeting is to be held, and the certificate of his having taken and subscribed the oaths as aforesaid ; or in case any person who shall officiate as a pastor or minister in any such episcopal meeting-house or congregation, shall not, as often as he shall so officiate, at some time during divine service, pray for his Majesty by name, his heirs or successors, and all the Royal Family, in the manner herein-before directed, every person so offending in any of the premises, being thereof lawfully convicted before any two or more justices of the peace, or before any other judge competent of the place summarily, shall, for the first offence, suffer imprisonment by the space of six months ; and for the second, or any subsequent offence, being thereof lawfully convicted before the Court of Justiciary, or in any of the circuit courts, shall be adjudged to be transported, and shall accordingly be transported to some of his Majesty's plantations in America for life ; and in case any person adjudged to be so transported shall return into, or be found in Great Britain, then every such person shall suffer imprisonment for life.

And for the better ascertaining what shall be deemed an episcopal meeting-house within the true intent and meaning of this act, and to prevent evasions thereof, be it further enacted and declared, That any meeting, assembly, or congregation in Scotland, where there shall be five persons or more assembled or met together to hear divine service, over and besides those of the household, if it be in any house where there is a family inhabiting, or if it be in an house or place where there is no family inhabiting, then where any such five or more persons shall be so assembled and met together to hear divine service, and where divine service shall be per-



formed by a pastor or minister being of, or professing to be of the episcopal communion, every such meeting, assembly, or congregation, shall be deemed and taken to be an episcopal meeting-house within the true intent and meaning of this act.

And be it further enacted by the authority aforesaid, That the said sheriffs and stewards, and their deputies, and the magistrates of royal boroughs, shall be obliged, and are hereby strictly enjoined and required hereafter, from time to time, to make diligent inquiry within their respective jurisdictions, concerning any offences that shall be committed against this act, or the other laws now in being, concerning the pastors or ministers officiating in any episcopal meeting-house in Scotland; and whenever they shall find that any meeting-house, within their jurisdiction, hath been set up or maintained without such entry being made as aforesaid, or that the pastor or minister officiating in any episcopal meeting-house hath been guilty of neglecting to pray, in express words, for his Majesty, his heirs or successors, by name, and all the Royal Family, in the manner herein-before directed, they are hereby authorised and required to cause such offences to be prosecuted before them, and to shut up, or otherwise suppress such meeting-houses, and to inflict the penalties imposed by this or other acts against the ministers or pastors officiating therein in such manner as is not allowed by law: And in case any information shall be given to the said sheriffs, stewards, or their deputies, or to the magistrates of royal boroughs; or if it shall appear to any of them, upon such inquiry as aforesaid, that any offence has been committed against this act, for which the penalty of transportation, or imprisonment for life, is hereby inflicted, then such sheriff, steward, his deputy, or other magistrate, shall cause intimation to be made thereof in writing, to his Majesty's advocate for Scotland, who is hereby required to prosecute the same with effect.

And be it further enacted by the authority aforesaid, That if any person, at any time after the said first day of September, shall resort to, or frequent any episcopal meeting-house or congregation in Scotland, whereof the pastor's or minister's letters of orders shall not be entered on record, or registered as aforesaid, or whereof a certificate of the pastor or minister's having taken the oaths, and his name and place of abode, and also the place where his meeting is to be held, shall not be entered according to the directions of this act, or where the pastor or minister shall not pray, in express words, for his Majesty, his heirs or successors, by name, and all the Royal Family, in the manner before directed, every person so offending, who shall not, within the space of five days, give information of such illegal meeting to some proper magistrate, such person so offending, and being thereof lawfully convicted before any two or more of his Majesty's justices of the peace, or before any other judge competent of the place summarily, shall, for the first offence, forfeit the sum of five pounds Sterling money; one moiety thereof to the use of his Majesty, his heirs or successors, and the other moiety to the use of such person who shall give information of the said offence, and suffer imprisonment by the space of six months, unless or until the same be paid; and for the second, or any subsequent offence, being thereof lawfully convicted before the Court of Justiciary, or in any of the circuit courts, shall suffer imprisonment for the space of two years from the date of such conviction.

And be it enacted by the authority aforesaid, That from and after the said first day of September, no letters of orders of any pastor or minister of any episcopal meeting or congregation in Scotland, shall be deemed sufficient, or be admitted to be registered, but such as have been given by some bishop of the Church of England, or of Ireland; or in case any letters of orders, other than such as are before described, shall be registered, such registration shall be deemed null and void to all intents and purposes.

Provided always, That every prosecution for any offence committed against this act, shall be commenced within the space of twelve months after such offence committed, and not afterwards.

And whereas it is just and necessary to provide, that those who give reason to suspect their being disaffected to his Majesty's person and government, and the present happy establishment, by their frequenting or resorting to such illegal meeting-houses, where his Majesty is not prayed for in express words, should be restrained from the power of hurting that establishment to which they shew such disaffection; be it therefore further enacted by the authority aforesaid, That from and after the said first day of September, no Peer of Scotland shall be capable of being elected one of the sixteen Peers, to sit and vote in the House of Peers in the Parliament of Great Britain, or of voting in the election of any of the said sixteen Peers, who shall have, at any time within one year preceding such election, been twice present at divine service in any episcopal meeting or congregation in Scotland, not held and allowed in pursuance of an act made in the tenth year of the reign of Queen Anne, intituled, An act to prevent the disturbing those of the episcopal communion, in that part of Great Britain called Scotland, in the exercise of their religious worship, and in the use of the liturgy of the Church of England; and for repealing the act passed in the Parliament of Scotland, intituled, Act against irregular baptisms and marriages; or which shall not, after the said first day of September, be registered according to the directions of this act; or where the pastor or minister officiating did not, in express words, pray for his Majesty, his heirs or successors, by name, and for all the Royal Family; and it shall be competent for any Peer of Scotland, present at the election of the said sixteen Peers, or of any of them, to make this objection, and to prove the same by a witness or witnesses upon oath, or by referring it to the oath of the Peer so objected to; which oath the Lord Clerk-Register, or

either of the two clerks of session, appointed by him to officiate in his name at such election of sixteen Peers, or of any of them, is hereby empowered to administer; and in case the same shall be proved, or the Peer so objected to shall admit the fact, or refuse to depose concerning it, he shall be, and is hereby disqualified from, and rendered incapable of voting, or being chosen at any such election as aforesaid; but such admission, or confession upon oath, or otherwise so made at such meeting, assembled for any such election, shall not be made use of, or given in evidence against any such Peer, upon any prosecution for any penalty inflicted by this or any former act of Parliament.

And be it further enacted by the authority aforesaid, That from and after the said first day of September, no person shall be capable of being elected, or of voting in any election of a member of Parliament for any shire or borough, in that part of Great Britain called Scotland, or of being elected, or voting in the election of a magistrate or counsellor for boroughs, or of a deacon of crafts within burgh, or of a collector or clerk of the land-tax or supply, who shall have, at any time within one year preceding such election, been twice present at divine service in any episcopal meeting or congregation in Scotland not held and allowed in pursuance of the said act made in the tenth year of the reign of Queen Anne, or which shall not, after the said first day of September, be registered according to the directions of this act, or where the pastor or minister officiating did not, in express words, pray for his Majesty, his heirs or successors, by name, and for all the Royal Family; and it shall be competent for any candidate or member of the meeting, assembled for any such election, to make this objection, and to prove the same by a witness or witnesses, upon oath, or by referring it to the oath of the person objected to, which oath the preses or clerk of such meeting is hereby empowered to administer; and in case the same shall be proved, or the per-

son so objected to shall admit the fact, or refuse to depose concerning it, he shall be, and is hereby disqualified from, and rendered incapable of voting, or being chosen at any such election as aforesaid; but such admission, or confession upon oath, or otherwise, so made at such meeting, assembled for any such election, shall not be made use of, or given in evidence against any such person, upon any prosecution, for any penalty inflicted by this or any former act of Parliament.

And be it further enacted by the authority aforesaid, That if any person or persons, at any time after the said first day of September, either peers or commoners, who have, or shall have any office or offices, civil or military, in that part of Great Britain called Scotland, shall resort to, or frequent any episcopal meeting-house or congregation in Scotland, whereof the pastor's or minister's letters of orders shall not be entered on record, or registrate as aforesaid, or whereof a certificate of the pastor or minister's having taken the oaths, and his name, or place of abode, and also the place where his meeting is to be held, shall not be entered according to the directions of this act; and where the pastor or minister shall not pray, in express words, for his Majesty, his heirs or successors, by name, and all the Royal Family, in the manner before directed, every person so offending, being thereof lawfully convicted before any two or more of his Majesty's justices of the peace, or before any other judge competent of the place, shall be disabled from thenceforth to hold such office or offices, and shall forfeit the same; and shall be adjudged incapable to bear any office, civil or military, in that part of Great Britain called Scotland, for the space of one year from and after the date of such conviction.

And be it enacted by the authority aforesaid, That in case any of the said judges or magistrates shall be guilty of any wilful neglect or omission of their duty in the premises, they shall forfeit the sum of fifty pounds Sterling, *toties quoties*;

one moiety thereof to the informer, the other to be disposed of for the use of the poor of the parish where the offender shall be resident for the time being, to be recovered by summary complaint before the Court of Session, or by prosecution before the Court of Justiciary at Edinburgh, or at the circuit courts of Justiciary.

And the statute 32. of Geo. III. *cap.* 63, “ for granting relief to pastors, ministers and lay persons of the episcopal communion in Scotland,” is in the following terms :

“ Whereas, by several acts of Parliament now in force, disabilities, forfeiture and penalties have been imposed in certain cases upon persons frequenting, resorting to, or officiating in certain episcopal chapels and meeting-houses in Scotland : And whereas there is sufficient reason to believe, that the pastors, ministers and laity of the episcopal communion in Scotland are now well attached to his Majesty’s person, family, and government : And whereas it is just and reasonable that such of them as are willing, in a proper manner, to manifest such attachment, should receive relief with respect to certain disabilities, forfeitures, and penalties, in the said acts mentioned :” Be it enacted, That so much of an act passed in the tenth year of the reign of her late Majesty Queen Anne, intituled, An act to prevent the disturbing those of the episcopal communion, in that part of Great Britain called Scotland, in the exercise of their religious worship, and in the use of the liturgy of the Church of England, and for repealing the act passed in the Parliament of Scotland, intituled, an “ Act against irregular baptisms and marriages ;” and also so much of an act passed in the fifth year of the reign of his late Majesty King George the First, intituled, An act for making more effectual the laws appointing the oaths, for security of the government, to be taken by ministers and preachers in churches and meet-

ing-houses in Scotland ; and also so much of an act passed in the nineteenth year of the reign of his late Majesty King George the Second, intituled, An act more effectually to prohibit and prevent pastors or ministers from officiating in episcopal meeting-houses in Scotland, without duly qualifying themselves according to law ; and to punish persons for resorting to any meeting-houses where such unqualified pastors or ministers shall officiate ; and also, so much of an act passed in the twenty-first year of the reign of his late Majesty King George the Second, intituled, An act to amend and enforce so much of an act made in the nineteenth year of his Majesty's reign, as relates to the more effectual disarming the Highlands in Scotland, and restraining the use of the Highland dress, and to masters and teachers of private schools, and chaplains, and to explain a clause in another act made in the same year relating to letters of orders of episcopal ministers in Scotland, and to oblige persons allowed to carry arms, and the directors of the bank there, and certain persons belonging to or practising in the Courts of Session and Justiciary, to take the oaths ; and to repeal some clauses in an act made in the first year of the reign of his late Majesty King George the First, whereby certain encouragements are given to landlords and tenants in Scotland, who should continue in their duty and loyalty to his said late Majesty, and for other purposes therein mentioned, as relate to the imposing any penalties, forfeitures, or disabilities on any person or persons for or on account of his or their frequenting or resorting to any episcopal chapel or meeting-house in Scotland, or any person or persons for or on account of his or their officiating at any such chapel or meeting-house, shall be and the same are hereby repealed.

II. Provided always, and be it enacted by the authority foresaid, That every person who shall exercise the function of a pastor or minister in any episcopal chapel, meeting-house, or congregation in Scotland, shall, within six months,

to be reckoned from and after the first day of July in the present year of our Lord 1792, or at some other time previous to his exercising the said function, take and subscribe the oath of allegiance, abjuration and assurance, in such manner as all officers, civil and military, in Scotland, are now by law obliged to take and subscribe the same ; and shall also subscribe, at the same time and place, a declaration of his assent to the thirty-nine articles of the Church of England, as contained in the act passed in the thirteenth year of the reign of Queen Elizabeth, in the words following, viz. :

“ I, A. B., pastor of a congregation of persons in the epis-  
“ copal communion in Scotland, meeting for divine worship  
“ at \_\_\_\_\_ in the county of \_\_\_\_\_ do  
“ willingly and *ex animo* subscribe to the book of articles of  
“ religion agreed upon by the archbishops and bishops of  
“ both provinces of the realm of England, and the whole  
“ clergy thereof, in the convocation holden at London, in  
“ the year of our Lord 1562; and I do acknowledge all and  
“ every the articles therein contained, being in number thir-  
“ ty-nine, besides the ratification, to be agreeable to the word  
“ of God.”

III. Provided also, and be it further enacted by the authority aforesaid, That every person who now does or shall hereafter exercise the function of a pastor or minister of any episcopal chapel or meeting-house in Scotland, shall, and he is hereby required, within six months, to be reckoned from and after the first day of July in this present year 1792, or at some time before his exercising the said function, to produce to the clerk of the shire, stewartry, or borough, where his meeting-house is situated, a certificate from the proper officer of his having qualified himself by taking and subscribing the said oaths, and a certificate from such officer of his having subscribed to the said articles above mentioned; of which respective certificates the clerk shall forthwith make an entry in the book appointed for keeping a list or register.



of the meeting-houses within that jurisdiction, which entry shall express the name of the minister whom the said certificates concern, and the situation and description of the meeting-house where he officiates or shall officiate, as minister or pastor; copies of which entries shall likewise be transmitted by the said clerk to the clerk of each House of Parliament, to be laid before the said houses respectively at their next meeting: and the said clerk of such shire, stewartry, or borough, shall likewise deliver two attested copies of each of the said certificates to such pastor or minister, one copy of each of such certificates to be by him fixed on the outside of the meeting-house where he officiates, or shall officiate, on or near the door thereof, and the other in some conspicuous place within such meeting-house; for each and every of which last-mentioned copies, the sum of sixpence sterling shall be paid, and no more.

IV. And be it further enacted by the authority aforesaid, That if any such pastor or minister, at any time after six months, to be reckoned from and after the said first day of July, shall officiate as a pastor or minister in any such episcopal chapel or meeting-house, without having taken and subscribed the oaths and articles aforesaid, and produced certificates thereof, according to the directions of this act, every such minister or pastor so offending in any of the premises shall, for the first offence, being lawfully convicted thereof, forfeit the sum of twenty pounds sterling, one moiety thereof to the informer, the other to be disposed of for the use of the poor of the parish where such offence shall be committed; and for the second offence, shall be, on lawful conviction thereof, declared incapable of officiating as pastor or minister of any such episcopal chapel or meeting-house as aforesaid, during the space of three years.

V. Provided also, and be it further enacted, That every such pastor or minister as aforesaid, who shall at any time after six months, to be reckoned from and after the said first

day of July, officiate in any episcopal chapel or meeting-house as aforesaid, shall, as often as he shall so officiate, at some time during the exercise of divine service in such episcopal meeting-house or congregation, pray for the King's most excellent Majesty by name, for his Majesty's heirs or successors, and for all the Royal Family, in the same form of words as his Majesty, his heirs or successors, and the Royal Family are or shall be directed, by lawful authority, to be prayed for in the prayers for the Royal Family contained in the Liturgy of the Church of England.

VI. And be it further enacted, That in case any person shall, at any time after six months, to be reckoned from and after the said 1st day of July, officiate as a pastor or minister in any such episcopal chapel or meeting-house, as aforesaid, and shall not, as often as he shall so officiate, at some time during divine service, pray for his Majesty by name, for his Majesty's heirs or successors, and for all the Royal Family, in the manner herein-before directed, every person so offending in any of the premises shall, for the first offence, being lawfully convicted thereof, forfeit the sum of twenty pounds Sterling, to be distributed in such manner as touching the other penalties in this act is herein-before directed; and for the second offence, shall, upon lawful conviction thereof, be declared incapable of officiating as pastor or minister of any such episcopal chapel or meeting-house as aforesaid, during the space of three years.

VII. And be it further enacted by the authority foresaid, That if any pastor or minister of any episcopal chapel or meeting-house in Scotland shall offend in any of the premises herein-before mentioned, such pastor or minister so offending shall be incapable of voting in any election of a member of Parliament for any shire or borough in that part of Great Britain called Scotland, or of voting in the election of a magistrate or counsellor for boroughs, or of a deacon of

crafts within borough, or of a collector or clerk of the land-tax or supply.

VIII. Provided always, and be it further enacted by the authority foresaid, That every assembly of persons for religious worship in any such episcopal chapel or meeting-house as aforesaid, shall be held with doors not locked, barred, bolted, or otherwise fastened during such assembly.

IX. Provided also, and be it further enacted, That no person exercising the function, or assuming the office and character of a pastor, or minister of any order, in the episcopal communion in Scotland as aforesaid, shall be capable of taking any benefice, curacy, or other spiritual promotion, within that part of Great Britain called England, the dominion of Wales, or town of Berwick upon Tweed, or of officiating in any church or chapel within the same, where the Liturgy of the Church of England as now by law established is used, unless he shall have been lawfully ordained by some bishop of the Church of England, or of Ireland.

X. Provided also, and be it further enacted by the authority aforesaid, That if any person, at any time after six months, to be reckoned from and after the said 1st day of July, shall be present twice in the same year at divine service in any episcopal chapel or meeting-house in Scotland, whereof the pastor or minister shall not pray in express words for his Majesty by name, for his Majesty's heirs or successors, and for all the Royal Family, in the manner herein-before directed, every person so present shall, on lawful conviction thereof, for the first offence, forfeit the sum of five pounds Sterling money, one moiety thereof to the use of his Majesty, his heirs or successors, and the other moiety to the use of such person who shall give information of the said offence, and shall suffer imprisonment for the space of six months, unless or until the same be paid; and for the second or any subsequent offence shall, on lawful conviction

thereof, suffer imprisonment for the space of two years from the date of such conviction.

XI. Provided always, That every prosecution for any offence committed against this act shall be commenced within the space of twelve months after such offence committed, and not afterwards.

XII. And be it further enacted by the authority aforesaid, That no Peer of Scotland shall be capable of being elected one of the sixteen Peers, to sit and vote in the House of Peers in the Parliament of Great Britain, or of voting in the election of any of the said sixteen Peers, who shall at any time after six months, to be reckoned from and after the said 1st day of July, be present twice in the same year at divine service in any episcopal chapel or meeting-house as aforesaid, whereof the pastor or minister shall not pray, in express words, for his Majesty by name, for his Majesty's heirs or successors, and for all the Royal Family, in manner herein before directed; and it shall be competent for any Peer of Scotland present at the election of the said sixteen Peers, or of any of them, to make this objection, and to prove the same by a witness or witnesses upon oath, or by referring it to the oath of the Peer so objected to, which oath the Lord Clerk-Register, or either of the two clerks of session appointed by him to officiate in his name, at such election of sixteen Peers, or of any of them, is hereby empowered to administer; and in case the same shall be proved, or the Peer so objected to shall admit the fact, or refuse to depose concerning it, he shall be and is hereby disqualified from and rendered incapable of voting or being chosen at any such election as aforesaid; but such admission or confession upon oath or otherwise so made at such meeting assembled for any such election, shall not be made use of or given in evidence against any such Peer, upon any prosecution for any penalty inflicted by this or any former act of Parliament.

XIII. And be it further enacted by the authority aforesaid, That no person shall be capable of being elected, or of voting in any election of a member of Parliament for any shire or borough in that part of Great Britain called Scotland, or of being elected, or voting in the election of a magistrate or counsellor for boroughs, or of deacon of crafts within borough, or of a collector or clerk of the land-tax or supply, who shall, at any time after six months, to be reckoned from and after the first day of July aforesaid, be present twice in the same year, at divine service, in any episcopal church or meeting-house as aforesaid, whereof the pastor or minister shall not pray, in express words, for his Majesty by name, for his Majesty's heirs or successors, and for all the Royal Family, in manner herein before directed ; and it shall be competent for any candidate or member of the meeting assembled for any such election to make this objection, and to prove the same by a witness or witnesses, upon oath, or by referring it to the oath of the person objected to, which oath the preses or clerk of such meeting is hereby empowered to administer ; and in case the same shall be proved, or the person so objected to shall admit the fact, or refuse to depose concerning it, he shall be and is hereby disqualified from and rendered incapable of voting, or being chosen at any such election as aforesaid ; but such admission or confession upon oath or otherwise so made at such meeting assembled for any such election, shall not be made use of, or given in evidence against any such person upon any prosecution for any penalty inflicted by this or any former act of Parliament.

XIV. And be it further enacted, That this act shall be deemed, adjudged, and taken to be a public act ; and shall be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without specially pleading the same.

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EXCHEQUER.

When Scotland was an independent kingdom, it had a separate Court of Exchequer; and there are two statutes prior to the Union, viz, 1633, *cap.* 18. and 1661, *cap.* 59, "anent the exchequer," which are now of course obsolete.

The Court of Exchequer in Scotland was instituted by Queen Anne: And the treaty of Union between England and Scotland contains the following provision :

Article XIX. And there be a Court of Exchequer in Scotland after the Union, for deciding questions concerning the revenues of customs and excises there, having the same power and authority in such cases as the Court of Exchequer has in England: And that the said Court of Exchequer in Scotland have power of passing signatures, gifts, tutories, and in other things as the Court of Exchequer at present in Scotland hath; and that the Court of Exchequer that now is in Scotland do remain until a new Court of Exchequer be settled by the Parliament of Great Britain in Scotland, after the Union; and that after the Union, the Queen's Majesty and her royal successors may continue a privy council in Scotland for preserving of public peace and order until the Parliament of Great Britain shall think fit to alter it, or establish any other effectual method for that end.

With reference to this part of the treaty of Union, the act 6th of Queen Anne, *cap.* 25, settled and established the Court of Exchequer in Scotland on its present footing, "as a court of record, revenue, and jurisdiction, for and within Scotland." The first five sections

of this statute relate to the appointment of Barons and members of court. Section 6. fixes its jurisdiction, and is in the following terms :

And be it further enacted by the authority aforesaid, That all and every the revenues and duties of customs and excise, and all and every other the revenues, debts, duties and profits of what nature or kind soever, any ways appertaining, or which hereafter shall appertain to the Queen's Majesty, her heirs or successors within Scotland, either as Queen of Great Britain, or as prince and steward of Scotland, and all honours, castles, manors, lands, tenements and hereditaments in Scotland, which now do, or hereafter shall appertain to the Queen's Majesty, her heirs or successors, by force or virtue of any attainder, outlawry, seizure for any crime or cause of forfeiture, debt or duty, or upon any extent, commission, or otherwise, or by force and virtue of the royal prerogative, or by any other right or title whatsoever, and all and every the rents, issues and profits thereof, or of any of them, and also all and every the goods, chattels, debts, credits, rights, titles, and personal estates within Scotland, any ways accruing or belonging, or which hereafter shall belong to the Queen's Majesty, her heirs and successors, by force or virtue of the royal prerogative, or of any attainder, outlawry, extent, inquisition, debt, duty, or forfeiture, or by any other right, title, ways or means whatsoever, and all the remedies and means for recovering the same, or the possession thereof, and all accounts relating thereto, and also all and every forfeitures and penalties which have been incurred, or shall or may be incurred or become any ways due and payable in Scotland, by force or virtue of any law or statute, touching or relating to the customs or excise, or by force or virtue of any penal or other laws or statutes whatsoever, and also all fines, issues, forfeitures or penalties, of what nature or kind soever, happening, arising or accruing to the Queen's Ma-

jesty, her heirs or successors within Scotland, and all informations, actions, suits, or demands, and also all obligations, recognisances, specialties, and other securities, touching or concerning the before-mentioned matters and things, and all prosecutions, remedies and accounts, for or concerning the same or other the premises, shall be within the jurisdiction and authority of the said Court of Exchequer in Scotland, and hereby are annexed to the said Court; and the Barons of the said Court for the time being shall have and exercise, and by virtue of this act are and shall be invested with all powers, authorities and jurisdictions, as well judicial as otherwise, for the hearing and determining of all actions, suits and questions in law or equity, touching the aforesaid revenues, honours, castles, manors, lands, tenements, goods, chattels, debts, duties, forfeitures, penalties, profits, and all other matters or things herein-before mentioned, and annexed to the said Court of Exchequer in Scotland, or the jurisdiction thereof; and that the said Court of Exchequer in Scotland shall and may act, do and proceed therein and thereupon in every respect whatsoever, as by law, or as the Court of Exchequer in England, by the constitution, course or practice of or in the said Court, hath been or is enabled, or hath used or practised to do in the like cases in England, and upon and in all such informations, actions, suits or demands, or touching or concerning any the premises, or any the proceedings thereupon, shall and may make all such orders and rules, and direct, award and issue all such writs, precepts, process and methods of proceedings, as hath or have been, is, are or may be done or practised in the same or like cases in the Court of Exchequer in England; all which informations, actions, suits and prosecutions, process and proceedings relating thereto, or to any the premises, shall be had, made and done in the office of the remembrancer of the Queen's Majesty, her heirs or successors in the said Court of Exchequer in Scotland; and the said Barons of the Court



of Exchequer in Scotland are hereby authorised and required, in case of any neglect or default by any the plaintiffs or defendants in any the said informations, actions or suits, or in any other informations, actions or suits which shall be commenced, sued or prosecuted in the said Court of Exchequer in Scotland, for any matter or cause whatsoever, within the jurisdiction of the said court, to give and cause judgments to be entered against any the parties making default, to plead or proceed to trial, and for recovery and condemnation of any goods, chattels or other things seized as forfeited, and for which no claim shall be duly entered, and to give and cause judgments to be entered in cases of demurrers joined in any the said causes depending before them, and to do, act and proceed in and about all and every the premises, as fully to all intents and purposes, as the Barons of the Court of Exchequer in England, by law, or by the course and method of proceedings in that court, should or might, or could do, or order to be done in such or the like cases, matters or things, in case the same were or should be depending in the said Court of Exchequer in England; and upon any issues joined in any the said causes, or in any other causes triable in the said court upon matters of fact, or which would be triable or inquirable by juries (if the same were in England), the Barons of the Exchequer in Scotland are hereby authorised and required to cause the same to be tried, either at the bar of the said court, or elsewhere, at such times and places as shall be for that purpose by the court appointed, by a jury of twelve persons of that county, shire, city or place in Scotland, where the said matters in issue to be tried did arise, or of such other county, shire, city, or place in Scotland, where the said Court of Exchequer shall order or direct the same to be laid and tried; each of which jurymen shall at the time of such trial have and be seised in his own right, or right of his wife, of lands or tenements of an estate of inheritance, or for his or her life, with-

in the county, shire, city, or place from whence the jury is to come, of the yearly value of five pounds at the least, or shall be then worth in goods, chattels, and personal estate, the sum of two hundred pounds Sterling at least, and for want thereof, or for any other just and reasonable cause, shall be subject to be challenged and set aside; and in all verdicts to be given by the juries the whole number of twelve must agree: And the said Barons of the Court of Exchequer in Scotland, and such of them before whom any such trials shall be, or shall be appointed to be, shall, by virtue of this act, have full power and authority to proceed to such trials, and to make, award and issue all such orders, rules, writs, and other process, and do or cause to be done all other acts, matters and things of what nature soever, as well in order to any such trials and notices for the same, as in, upon and after the said trials, in every respect whatsoever, whether with relation to sheriffs and other officers, parties, jurors, witnesses, challenges, or other matters or proceedings in, about or relating to any such trials, or the verdicts to be taken thereupon, or nonsuits therein, and have, and execute as fully and amply, to all intents and purposes, all powers, authorities and jurisdictions relating to, or proper for any such trials, or the matters for which such trials shall or ought to be, in every respect whatsoever, and for awarding costs upon the account of any such trials, or for not proceeding to trial, and for awarding any new or other trials, as the Barons of the Court of Exchequer in England, or any of them, before whom any trials, either at the bar, or otherwise, have been or should have been by the laws of England, or by the constitution, power or practice of the said Court of Exchequer in England, or by virtue of any law or statute, commission or authority whatsoever, hath or have been, is or are enabled, or have used to make, do or execute in or concerning any such or the like trials or cases in England; and after any such trials had, the said Barons of the said Court of Exchequer

in Scotland, and the officers, attorneys, and clerks in the said court, shall, and are hereby enabled and required to give rules, and do all other things in order for judgments to be entered in the said Court of Exchequer in Scotland, upon the records of trials at bar, and of the returns of records of *nisi prius*, in case of trials in the countries, as are, have been, or may be used or practised in like cases in the Court of Exchequer in England; and the Barons of the said Court of Exchequer in Scotland may and shall proceed to give judgment according to the right of the causes, and to award executions upon such judgments, and to do and award all and every act, matter and thing touching and relating to any such trials, judgments or executions, as by law, or the rules, orders or directions of the Court of Exchequer in England, or by the laws or statutes in England, or hath or have been or ought to be used in such or the like cases.

By section 7. the Barons are empowered “ to take “ all manner of recognisances and securities for debts” due to the Crown, in the same manner as is done in England, by virtue of the 33. of King Henry VIII. *cap.* 39.

By section 8. a limitation is imposed on the execution against the estate of persons indebted to the Crown, in the following terms :

Nevertheless that nothing be done to make the real estate in Scotland of any debtor or accountant to the Crown there subject or liable to the payment of any debts or duties to the Crown, further or otherwise, or in any other manner or form, than such real estate may or ought to be subject and liable by the laws of Scotland; and that the laws of Scotland shall, in all such cases, and for all such purposes, hold place and be observed.

Section 9. provides, that the English statutes rela-

tive to jeofails and amendments shall extend and apply to Scotland. It further declares,

That there shall be four terms in every year, whereof one of them shall be called Martinmas term, and shall yearly commence upon the 3d of November and end on the 29th day of November ; and another of them shall be called by the name of Candlemas term, and shall yearly commence upon the 23d day of January, and end upon the 12th day of February yearly ; and another of them shall be called by the name of Whitsuntide term, and shall yearly commence upon the 25th day of May, and shall end on the 15th day of June following ; and the fourth of them shall be called by the name of Lammas term, and shall yearly commence on the 20th day of July, and shall end on the 8th day of August following ; and if any of the said days on which any of the said terms shall begin or end shall happen to be a Sunday, then such term respectively shall begin or end the next day following ; in and during which terms the Barons of the said court shall sit therein, and hear and determine the business, causes, matters and things depending, or which shall, may or ought to be prosecuted in the said court either in law or equity, or which shall or may concern the revenues, debts, duties, matters or things within the jurisdiction of the said court, and that either with or without any adjournment to or for any time or place : And that the said Barons shall and may order and appoint the days and times for the returns of writs or process issuing out of and returnable in the said court, and set and impose upon all such sheriffs, and other officers and persons, bodies-politic or corporate, to whom the execution of such writs or process do or shall appertain, such issues, fines, amerciements and penalties, as to the said court shall seem fit and reasonable : And the said Barons in court, or any of them out of court, shall take bails, recognisances, and other securities, informations, bills, answers

and affidavits, and take and declare accounts, and do and execute all matters and things relating to the business or jurisdiction of the said court, as fully to all intents and purposes, as the Barons of the Exchequer in England, or any of them, have or do use in such or the like cases in or out of court there: And the Barons of the Court of Exchequer in Scotland are hereby also authorised and enabled to hold plea in equity by English bill, petition or suit to be brought or exhibited in the said court by or against the attorney or advocate-general of the Queen's Majesty, her heirs and successors, on her or their behalf, or for her or their interest, or by or against any other person or persons any ways concerned in or about any the revenues, debts or duties before mentioned, touching the said revenues, debts or duties, for any discovery or relief in equity: And in and upon such bills, petitions and suits, the said Court of Exchequer shall and are hereby enabled to issue and award process of *sub poena* or *distringas*, and all other usual and proper process for compelling the parties defendants to or in such suits, to put in their answers, and make their defences to such bills, petitions or suits, and for the parties to such suits to proceed therein and thereupon, according to such rules or orders, and in such manner and form as the Court of Exchequer in England hath used to proceed by; and upon issues joined in any the said causes or suits in equity, the Court of Exchequer in Scotland is to cause witnesses to be examined (if desired) on either side, by commissions to be awarded for that purpose, or by sworn examiners; and after publication of the depositions of the witnesses, to proceed to the hearing of the said causes; and upon the proofs and evidence therein or thereupon, or upon bill and answer, where no witnesses shall be examined or proofs made, to make such orders and decrees either for the relief of the plaintiffs, or for directing any issue or issues at law to be tried for the information of the conscience of the court, or for dismissing of the

said plaintiff's bills, or otherwise, as to the said court shall seem just and reasonable, and as is or hath been used in the Court of Exchequer in England; save only that all issues at law directed, as aforesaid, for the information of the conscience of the court, shall be and are hereby ordered to be made up and proceeded upon in the said Queen's remembrancer's office in Scotland, in such manner as such issues are used to be made up and proceeded upon in the office of pleas in the Court of Exchequer in England; and the said court shall award such process for the enforcing any of the parties to such suits to perform and yield obedience to such orders or decrees as shall be made in the said causes; and in case of non-performance thereof, or disobedience thereunto, the said court shall award all such process of contempt against the persons and estates of him, her or them that shall be in contempt, or refuse obedience to any the said orders or decrees, as hath been used and practised in like cases in or by the Court of Exchequer in England, and make and execute like process, orders and proceedings thereupon, as are used in the Court of Exchequer in England in like cases.

The 12th section declares,

That it shall and may be lawful to and for any person or persons, bodies-politic or corporate, party or parties to any judgment which shall be given in the said Court of Exchequer in Scotland, his, her or their heirs, executors or administrators, or such other person or persons, bodies-politic or corporate, who shall be privy to, and affected by such judgment, and who by law is or are entitled to bring and maintain a writ of error thereupon, to sue and prosecute out of the Court of Chancery in England a writ or writs of error, to be made in usual manner upon any such judgment, returnable in the Parliament of Great Britain, and such and the like securities, matters and things, way and method of

proceedings shall and may be had therein and thereupon, and relating thereto, as have been, are, or may be used and practised upon, or concerning writs of error returnable in Parliament, upon any judgment in any the courts in England, and upon or relating to the affirming or reversal of such judgments, and the proceedings thereupon in like cases; and every person or persons against whom any orders or decrees in English causes shall be made in the said Court of Exchequer in Scotland shall and may have and pursue such and the like relief and redress therein, as any person or persons, against whom any orders or decrees in the Court of Exchequer in England, have been or shall be made, may have and pursue in like cases.

By section 13. the collection and application of the revenue in Scotland are declared to be vested in the Lord High Treasurer of Great Britain.

By sect. 14. all fines imposed and ascertained in the Court of Exchequer "shall be levied by the authority "and process of the said court, and paid and answered "to the use of her Majesty."

Section 15. empowers the Barons, in case of any party having a plea to urge "in bar or discharge of "any fine, or why such person or persons ought to be "charged or chargeable to or for the same,"

To accept, adjudge and allow the same, and wholly and clearly to acquit and discharge all and every the said persons, which shall be impleaded or sued for the same, or to make and take any fitting and reasonable composition for the same, as in the judgments and discretions of the Barons of the said Court of Exchequer, upon hearing of the attorney or advocate-general, or other learned counsel of her Majesty, her heirs and successors, shall be found and thought just and reasonable, and to proceed and act therein, and give

discharges thereupon, in such sort and manner as hath been and is used and practised in the like cases in and by the Court of Exchequer in England ; any thing herein contained to the contrary notwithstanding.

Sect. 16. authorises the Barons to receive and pass the accounts of all sheriffs and officers “ who have or “ shall have the execution of any the process issuing out “ of, and returnable in the said Court of Exchequer.”

By sect. 17. all English statutes relative to excise and customs are declared to apply to Scotland, in so far as consistent with the articles of Union.

Sect. 18. provides, that the Crown shall have right, by virtue of a commission from the Court of Exchequer, to appoint all creeks, harbours, and landing-places for the importation and exportation of merchandise or goods.

Sect. 19. relates to a very important part of the jurisdiction of this court. It enacts,

That the Court of Exchequer in Scotland shall have power of passing signatures, gifts, tutories, and in other things as the Court of Exchequer in Scotland at the time of the said treaty had ; be it therefore enacted by the authority aforesaid, That the Court of Exchequer in Scotland shall have power to receive resignations in her Majesty's name of all baronies, lands, lordships, tythes, jurisdictions, offices, and all other rights which were in use to be resigned and received in her Majesty's name in the Exchequer, at the time of the said treaty ; and that signatures, gifts, tutories, and other things which were presented, revised and compounded, or which were passed or given by the Lord High Treasurer, or Commissioners of the Treasury, or Court of Exchequer there at the



time of the said treaty, shall be given in, resigned, presented, revised, compounded and expedited as formerly, with this alteration only, that the presenter of signatures shall present the said signatures, gifts, tutories, and other things to the said Chief Baron and Barons of the Exchequer in Scotland, who are hereby authorised and empowered to revise and compound the same, in the same manner, and with the same powers as the said Lord High Treasurer, or Commissioners of Treasury of Scotland might have done; and thereafter in a Court of Exchequer, to hear parties concerned, and to pass all such signatures, gifts, tutories and other things aforesaid, and especially to declare and appoint fiars, as the Court of Exchequer might have done at the time of the said treaty; and such signatures, gifts, tutories, and other things aforesaid, being passed in the Exchequer, shall be recorded by the proper clerks, and thereafter be expedited at the proper seals, as at the time of the said treaty by the law and practice of Scotland was required; reserving nevertheless full power to her Majesty, her heirs and successors, to receive resignations immediately in her or their royal hands, and to grant all signatures, gifts and other things, in the same manner as her Majesty could have done at the time of the aforesaid treaty.

**Sect. 20. declares,**

That all barristers at law, advocates, or counsellors, who may plead and practise before the Court of Exchequer in England, or before the Court of Session in Scotland, have, and shall have right and privilege to plead and practise before the said Court of Exchequer in Scotland.

Sect. 21. regulates the compensation to be made to those officers of court who hold their appointments for life or by inheritance.

Sect. 22. provides, that the right or claim of pre-

ference of the title of the crown to any lands, “ shall continue to be tried, and decided in the Court of Session, as was used, and of right ought to have been by the law and practice of Scotland, at the time of the Union, and not otherwise.”

Sect. 23. declares, that no other fees are to be charged, or taken by any officers in the Court of Exchequer, but such as are sanctioned and appointed by the Barons: and of which tables are to be exhibited in the different offices.

Sect. 24. limits the number of Barons to five.

The act 7th of Queen Anne, *cap.* 14. declares, that the Whitsuntide term shall begin on the 1st, and end on the 22d of June yearly; and that the Lammas term shall begin on the 7th, and end on the 26th of July yearly. But the statute 30th of Geo. III. *cap.* 17. alters this arrangement, declaring that the Whitsuntide term shall begin on the 22d May and end on the 2d of June.

The statute 19th of Geo. III. *cap.* 38, declares, that the Martinmas term shall begin on the 24th November, and end on the 20th December yearly; and that the Candlemas term shall begin on 15th January, and end on 3d February yearly. In these various enactments, there is a similar provision to that made in the 6th of Queen Anne, relative to the case of any of the days of commencement or termination falling on a Sunday.

The statute 4th of Geo. II. *cap.* 26, declares,

That all proceedings whatsoever in any courts of justice, within that part of Great Britain called England, and in the

Court of Exchequer in Scotland, and which concerns the law, and administration of justice, shall be in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever, and shall be written in such a common legible hand and character, as the acts of Parliament are usually engrossed in, and the lines and words of the same to be written at least as close as the said acts usually are, and not in any hand commonly called court-hand, and in words at length, and not abbreviated; any law, custom, or usage heretofore to the contrary thereof notwithstanding: And all and every person or persons offending against this act, shall, for every such offence, forfeit and pay the sum of fifty pounds to any person who shall sue for the same by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record in Westminster Hall or Court of Exchequer in Scotland respectively, wherein no essoign, protection, or wager of law, or more than one imparlance shall be allowed.

Provision is made for salaries to the Barons of the Court of Exchequer, by the following statutes: 32d of Geo. II. *cap.* 35.—5th of Geo. III. *cap.* 47.—26th of Geo. III. *cap.* 46.—39th of Geo. III. *cap.* 110, amended by 39th and 40th of Geo. III. *cap.* 55.—50th of Geo. III. *cap.* 31.—48th of Geo. III. *cap.* 145, passed to enable “his Majesty to grant annuities “to the Judges of the Courts of Session, Justiciary, and “Exchequer in Scotland, on the resignation of their “offices:”—And 54th of Geo. III. *cap.* 94, empowering his Majesty “to grant additional annuities to “Judges of the Courts of Session, Justiciary, and Exchequer in Scotland, who had resigned their offices “before the last augmentation of salaries to the judges “of these courts.”

## ACTS OF SEDERUNT.

A. S. 18th November 1729, and A. S. 13th June 1761, regulating the precedency of this Court with the Court of Session.—And A. S. 6th December 1753, and A. S. 25th July 1765, as to the jurisdiction of the Court of Exchequer.

Sir H. Jardine's History of the Exchequer.

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EXECUTION OF SUMMONS.

To prevent any oppressive proceeding on the part of a pursuer, and, at the same time, to leave the defender no pretence for ignorance of the citation given to him, the law requires, that all letters passing the signet be executed by messengers-at-arms in presence of witnesses. There are several statutes on this subject.

The act 1540, *cap.* 75, declares,

That in times cumming, quhair ony officiar or schireffe in that parte, passis at commande of the kingis letters, or the schireffes, stewardes, barronnes, or baillies precept, to summounde onie partie, gif they cannot apprehende them personallie, they sall passe to the zett or dure of the principal dwelling-place, quhair the person to be summounde dwellis, and hes their actual residence for the time, and there sall desire to have entresse, quhilk gif it be granted, they sall first schaw the cause of their cumming: And gif they cannot get the partie personallie, they sall schaw their letters or precept before the servandes of the house, or uther famous witenesse, and sall execute their offices and charge, and thereafter sall offer the copie of the saidis letters or precept to

ony of the servands, quhilk gif they refuse to do, that they affix the samin upon the zett or dure of the persones sum-mound : And sik-like, gif they get na entresse, they first knockand at the dure sex knockes, they sall execute their office before famous witesse, at the said house and dwelling place, and affixe the copie upon the zett or dure thereof, as said is, quhilk sall be leiffull and sufficient sumounding and delivering of the copie, and the partie nor officiar sall not be halden to give ony uther copie, bot at their awin pleasure : And everie officiar in his indorsation sall make mention of his awin execution, in maner foresaid : And the partie at quhais instance the letter or precept is direct sall pay to the officiar executor the expenses of the copie affixed, as said is, and sall be taxed and given againe to him, at the given of the decreet or sentence, gif he happenis to obtaine : and gif the officiar beis foundin culpable in the execution of his office, he sall be put in our Sovereine Lordis prison, and punished in his person and gudes, at the kingis grace will.

The act 1555, *cap. 32*, regarding executions against persons furth of the realm, is as follows :

It is statute and ordained, that gif ony person or persones beis summond and warned lauchfullie, aucht dayes before their departing foorth of the realme, and passis foorth of the samin thereafter, *nisi reipublicæ causa*, the partie persewar sall have processe upon his first sumounding bee continuationes, in sik-like maner as and his partie had not past out of the realme, be warninges on fiftene dayes, langer or schorter, as the persewar sall desire, makand warning at the dwelling-place of the defendar, gif he ony hes, and failzieing that he have na dwelling-place, nor hes not constitute procuratoures, to bee warned at the merkat croce of the head burgh of the schire quhair he had maist resorte before his departing. And this act to have place in civil actiones allanerlie, bot not against witesse.

The act 1555, *cap.* 33, as to the manner of citing defenders, provides,

That gif there be maa persons nor twa contained in the letter, being all called upon ane deede and crime, in that case, twa copies to be delivered to twa of the principal named in the saidis letters, or then given to their wives or servandes, or affixed upon their zettes or dwelling-places, gif they ony have, and ane copie left and affixed upon the mercat croce quhair the publication is maid, to be sufficient to the haill persones, quhatsumever they bee, contained in the saidis letters.

The act 1592, *cap.* 138, prohibits the introduction of unlawful and impossible conditions into obligations for borrowed money, and gives the following special instance :

As quhair sum persones gives foorth their money upon profite, upon contractes or obligationes, they provide that the parties receivers thereof quhair-soever they dwell, in farrest partes of the realme, sall be charged to make payment, only be open proclamation, at the mercat croce of Edinburgh, upon sa schort and suddaine warning, as probable and possible it cannot cum to the knowledge of the persones awa charged. And that the denunciation of the horning sall be at the samin mercat croce, and the horning registrat in the schireffe buikes of Edinburgh, makand the samin als lauchfull, as gif the persones were charged personally, or at his dwelling place : and the execution of horning, used at the mercat croce of the head burgh of the schire, quhair the parties dwellis, and the horninges registrat in the schireffe buikes theirow, to the great hurt and prejudice, not onelie of the parties sa denounced, bot of our Soveraine Lord and his lieges, to quhais knowledge probable the saidis denunciations of hornings cannot cum.

Therefore his Hienes, with advise of his Estaites in Parliament, statutes, ordainis and declairis, that na sik unlauchfull and impossible conditiones be made in contractes or obligationes, amanges onie of his Heines subjects in time cumming. And in case onie denunciations of horninges sall happen to be made at the said merkat croce of Edinburgh, only upon charges used thereat, proceeding upon the unlauchfull and impossible conditiones abone specified, the same charges and denunciations of horning sall not be repute lauchfull, bot the parties users theirow sall be charged to cause charge and denunce of new, according to the forme used and observed be the common law and consuetude of the realme.

Another act of the same year, (1592,) *cap.* 139, declares, "that, in all time coming, all copies of summonses and letters which shall be delivered to any party, be subscribed by the officer executor thereof."

The act 1681, *cap.* 5, declares,

That none but subscribing witnesses shall be probative in executions of messengers, of inhibitions, of interdictions, hornings, or arrestments; and that no execution whatsoever to be given hereafter shall be sufficient to infer interruption of prescription in real rights, unless the same be done before witnesses present at the doing thereof subscribing: and that, in all the said cases, the witnesses be designed in the body of the writ, instrument or execution respectively, otherwise the same shall be null and void, and make no faith in judgment nor outwith.

The statute 1685, 48, being an act in favour of the inhabitants of Orkney and Zetland, declares,

That all summons to be intended against the inhabitants of Orkney and Zetland, before the Lords of Privy Council, the

Lords of Session, and before the Commissioners of Justiciary, and letters of horning and law-burrows upon their decreets, or by their warrant, shall be execute in time coming upon forty days, but prejudice always of letters to be raised upon writs registrated of consent of parties, where, by the clause of registration, the party consents that execution should pass on a shorter time.

The act 1686, *cap.* 4, declares,

That in time coming, all citations before the Lords of Session, and citations before any other judges, civil or criminal, which formerly by law or custom used to be in writ, and all executions of letters of horning, inhibition and others whatsoever, be subscribed by the executor thereof, and the witnesses; otherwise to be null and void. And that the same shall not be quarrellable for the want of stamping, any law or practick to the contrary notwithstanding.

The statute 1693, *cap.* 12, concerning citations to the first and second diet, has been superseded by recent regulations.

#### ACTS OF SEDERUNT.

A. S. 28. June 1784, blank executions are null.—A. S. 5. March 1777, executions by sheriff-officers are on the same footing.—A. S. 8. Dec. 1825, as to form of edictal citations against persons forth of Scotland.

Erskine, II. 5, 55, and III. 2, 17.

#### DECISIONS.

Edgar, 30. July 1725, 3704.—Fraser, 14. Jan. 1795, Mor. 3706.—Dunbar, 27. July 1745, *ib.* 3705.—Sharp, Fairlie, and Co. 21. Feb. 1822.—Hog, 2. June 1797, *ib.* 8346.



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EXECUTORS.

An executor is that person to whom a testator, or the law itself failing the testator's appointment, commits the distribution of his moveable estate after his death. In former times, this office was generally conferred upon the clergy ; because the bishop was interested in the funds, to the extent of a twentieth part, called *quot*. This *quot* was discharged by the statute 1700, *cap*. 14. In those cases, where there was no express appointment in favour of the bishop, the law presumed that he would have been selected, if the dead's part of moveables had not been otherwise disposed of. This presumption in favour of the clergy, where there was no express nomination of executor, was declared at an end by the statute 1540, *cap*. 120, which provides,

That quhair ony sick persons dies within age, that may not make their testamentes, the nearest of their kin to succede to them, sall have their gudes, without prejudice to the ordinares, anent the quote of their testamentes.

There still remained one subject of doubt, viz. the true intention of a testator in appointing a stranger to be his executor. To obviate this, the act 1617, *cap*. 14, exhibits him in his true legal character, as a trustee merely for behoof of the next of kin or legatees. It is in the following terms :

Our Sovereigne Lord understanding that a great number

of ignorant people, the time of their sicknesse and disease, or otherwise at the making of their testaments and latter wills, do nominate certain strangers to be their executors, meaning only to commit the care of their goods, and diligent in-getting thereof, to the saids strangers, and that to the behoof of their children, or other persons who are nearest of kin; whereas by the contrary, the said office of executry, by the interpretation now observed, doth carry with it the whole profit and commoditie of the defunct's part of the goods contained in testament; which his Majesty findes to be altogether against law, conscience and equity: therefore his Majesty, with advice and consent of the Estates of Parliament, finds and declares, that all executors, already nominate in any testament not as yet confirmed, or to be nominat in any testament to be made hereafter, are, and shall be obliged, to make count, reckoning, and payment of the whole goods and geare appertaining to the defunct, and intrometted with by them, to the wife, children and nearest of kin, according to the division observed by the laws of this realm: reserving onely to the saids executors the third of the defunct's part, all debts being first payed and deduced, without prejudice alwayes to the saids executors of whatsoever legacies left to them by the saids defuncts, which shall no wayes be prejudged by this present act; but the saids executors shall have full right to their saids legacies, albeit the same exceed the said third of the defunct's part; and in case the saids legacies exceed the whole third part, the saids executors shall have right to the whole legacie, and no part of the third: with this expresse declaration, that where legacies are left to the executors, they shall not fall both the saids legacies and a third by this present act, but the saids legacies shall be imputed and allowed to them in part of payment of their third.

The act 1690, *cap.* 26, " anent confirmation of testaments," declares,

That where special assignations and dispositions are lawfully made by the defunct, though neither intimate nor made public in his lifetime, they shall be yet good and valid rights and titles to possess, bruik, enjoy, pursue or defend, albeit the sums of money, or goods therein contained, be not confirmed; without prejudice always to the competition of creditors and others, and of their rights and diligences as formerly, before the making hereof.

And the statute 4. of Geo. IV. *cap.* 98, “for the better granting of confirmations in Scotland,” is as follows:

“Whereas, it is expedient that provision should be made for the better granting of confirmations in certain cases in Scotland;” be it therefore enacted, &c. That from and after the passing of this act, in all cases of intestate succession, where any person or persons who, at the period of the death of the intestate, being next of kin, shall die before confirmation be expedite, the right of such next of kin shall transmit to his or her representatives, so that confirmation may and shall be granted to such representatives, in the same manner as confirmations might have been granted to such next of kin immediately upon the death of such intestate.

II. And be it further enacted, That from and after the 1st day of January 1824, caution shall not be required to be found by executors nominate, and in all other cases the court granting confirmation shall fix the amount of the sum for which caution shall be found by the person or persons to whom confirmation shall be granted, not exceeding the amount confirmed.

III. And be it further enacted, That from and after the 1st day of January 1824, every person requiring confirmation shall confirm the whole moveable estate of a deceased person known at the time, to which such person shall make

oath : Provided always, That it shall and may be lawful to eik to such confirmation any part of such estate that may afterwards be discovered, provided the whole of such estate so discovered shall be added, upon oath as aforesaid : Provided nevertheless, That nothing herein contained shall affect or alter the provision made with respect to special assignments by an act of the Scottish Parliament, made in the year 1690, intituled, Act anent the confirmation of testaments.

IV. Provided further, and be it enacted, That in the case of confirmation by executor's creditor, such confirmation may be limited to the amount of the debt and sum confirmed to which such creditor shall make oath : Provided always, That notice of every application for confirmation by an executor's creditor shall be inserted in the Edinburgh Gazette, at least once, immediately after such application shall be made ; in evidence whereof, a copy of the Gazette in which such notice shall have been inserted shall be produced in court before any such confirmation shall be further proceeded in.

Erskine, III. 9. 26.—Bell, II. 82.—Act 1693, *cap.* 15.

## DECISIONS.

Soutar v. M'Grougar, 22. Jan. 1801, Mor. App. No. 2, *voce* "*Implied Will.*" — Nasmith v. Hare & others, 17. Feb. 1819, F. C.—Bell v. Wilkie, 12. Feb. 1662, Mor. 9250. —Duke of Buccleuch, 14. Feb. 1677, *ib.* 2369.—Blackadder, 23. June 1808, *ib.* App. No. 6, *voce* "*Service and Confirmation.*" —Spalding v. Farquharson, 15. May 1811, F. C.—Shand's Creditors, 16. Jan. 1823, S. & D. II. 118. — Bannerman and others, 28. Feb. 1822, *ib.* I. 362. — Nasmyth, 11. Feb. 1778, Mor. 3918. — Somerville v. Creditors of Murray, 4. Dec. 1744, *ib.* 3902. — Gibb v. Fraser, 10. Feb. 1784, *ib.* 3921.—Park v. Maxwell, 28.

June 1785, *ib.* 14382.—*Alison v. Creditors of Scollay*, 28. May 1802, *ib.* 3922.—*Lawrie v. Gordon*, 27. July 1779, *ib.* 3918.—*Cockburn v. Arbuthnot*, 27. Nov. 1789, *ib.* 14383.—*Grant v. Lennox*, 26. March 1784, *ib.* 14381.—*Baird v. Gray*, 3. Feb. 1744, and *Creditors of Alcorn*, 20. Feb. 1751, both in *Kilkerran's Collection*.—*Pringle v. Veitch*, 7. March 1769.—*Watson v. Marshall*, 19. June 1782, *ib.* 7009.—*Thomson, &c. v. Grant*, 20. July 1784, *ib.* 14378.—*Jameson v. Spottiswoode's Trustees*, 6. Dec. 1808.—*Richardson v. Shiells*, 19. Feb. 1784, 14377.—*M'Dowall*, 29. June 1784, 14404.

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### EXECUTOR-CREDITOR.

As a counterpart to the diligence of arrestment, confirmation *qua* creditor is an expedient of the law, by which the moveable funds of a deceased debtor, to which his executors have made up no title, are transferred to the creditor using the diligence in payment of his debt.

The statute 1695, *cap.* 41, declares,

That, in the case of a moveable estate left by a defunct, and falling to his nearest of kin, who lies out, and doth not confirm, the creditors of the nearest of kin may either require the procurator-fiscal to confirm and assign to them, under the peril and pain of his being liable for the debt, if he refuse, or they may obtain themselves decerned executors dative to the defunct, as if they were creditors to him: with this provision always, That the creditors of the defunct, doing diligence to affect the said moveable estate, within year and day of their debtor's decease, shall always be pre-

ferred to the diligence of the said nearest of kin. And it is further declared, That, in the case of any depending cause or claim against a defunct the time of his decease, it shall be leisume to the pursuer of the said cause or claim, to charge the defunct's nearest of kin to confirm executor to him, within twenty days after the charge given; which charge so execute, shall be a passive title against the person charged, as if he were a vitious introneter, unless he renounce, and then the charger may proceed to have his debt constitute, and the *hæredit as jacens* of moveables declared liable by a decret *cognitionis causa*; upon the obtaining whereof, he may be decerned executor dative to the defunct, and so affect his moveables in the common form.

Under this statute, an executor-creditor confirms only so much of the moveable funds as is sufficient for the payment of his own debt, without regard to any other claims against the executry.

Erskine, III. 9. 34.—Bell. II. 86.

#### ACTS OF SEDERUNT.

A. S. 28. Feb. 1662.

A. S. 14. November 1679, Executor-creditors may get a licence to pursue without confirmation, on making faith that they are doubtful as to the state of the deceased's funds. But these licences are granted for a limited time, and upon caution to confirm afterwards.

A. S. 2. November 1825.

#### DECISIONS.

Mitchell, 24. June 1737.—Reid v. Jones, 17. May 1816.

—Tait v. Kay, 12. Feb. 1779, Mor. 3142.—Bell v. Campbell, 28. November 1781, *ibid.* 3861.—Wilson and MacClellan v. Fleming, 26. June 1823, S. & D. II. 430.

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 EXPENSES OF PROCESS.

At the close of a protracted litigation, it becomes an important question, on whom the burden of the expenses ought to fall. One of the parties may have been pursuing a groundless, and perhaps a vexatious action, which the other party was compelled to defend at a great expense. Or the pursuer may have been reluctantly obliged, in this manner, to assert claims which the defender obstinately and unjustly withheld. Or the action may have involved a difficult question of law, upon which the court themselves could not come to a decision, without much argument and investigation.

As to the two first of these situations, there appears to be little difficulty in the determination of the question of expenses. The successful party gets no advantage, even when he is indemnified for his expenses. But, with regard to the third case, the exercise of the judicial power may be attended with some difficulty. Several statutes have been passed relative to this subject.

The act 1557, *cap.* 64, bearing this title, "The expenses of pley to be taxed and inserted in the decreets," is as follows :

The Lordes ordainis condemnatour or absolvitour of expenses to be maid at the decision of ever-ilk cause, and the samin taxt, to be summed in the principall decreetes to be given hereafter : providing alwaies, that expenses used in time by-gane, to be given in ony artickle of the proces payed, be as they were woont to be of before.

The act 1587, *cap.* 43, declares,

That the partie against quhom decreete beis given, anent liquid summes, before the Lordes of Session, sall pay to the saidis Lordes twelve pennies of everie punde, effeirand to that quhilk beis recovered and obtained before them : and in all decreetes consistand *in facto*, he quha tinis the play sall content and pay to the saidis Lordes the summe of five pundes money, and alsway the expenses of the partie obtainer of the decreete, at the modification of the judge ; and ordainis the same forme and ordour to be observed heirintill, as hes bene kept be the saids Lordes in uptaking of 40 schillinges of ilk decretit of before.

The act 1592, *cap.* 142, announcing by its title, “ that damages and expenses of pley should be modified by the judges,” ordains,

That damage, interest, and the expenses of pley, maid and susteined be the parties be altogidder admitted, and liquidat be the decret, before all judges within this realme : and specialle quhen as the libell, claime, or petition ar proven be writ, containand damage, interest and expenses, and upon registrat bandes, obligationes, and contractes, sum-moundes bearand for the coastes and skaithes, quhilk will stay parties to be willfull and obstinat pleyares : And this to be extended alsweill to the defenders obtainand absolvitour, as to the parties persewares obtainand decreete condemnatour.

With regard to expenses in actions of suspension, the act 1696, *cap.* 22, declares,

That when any suspension shall be raised for hereafter, the Lords, at the discussing thereof, and finding the letters orderly proceeded, shall also declare, whether the suspension was calumniously raised or not ; and if they shall find



it to have been calumniously raised, then they shall likewise decern for the whole charges, expenses, and damages, to be given up in a particular account, and deponed upon by the charger, to have been lawfully expended, and sustained by him in prosecuting and discussing thereof, without any ease or defalcation: And further, That if the charger shall be found calumnious or malicious, that the suspenders also have the same justice.

In the statute 6. of Geo. IV. *cap.* 120, there is a provision in the 17th section, "that in pronouncing judgment on the merits of the cause, the Lord Ordinary shall also determine the matter of expenses, so far as not already settled, either giving or refusing the same in whole or in part." And § 21. of the same statute declares, "that the Inner-House shall, in deciding the cause, also determine the matter of expenses."

#### ACTS OF SEDERUNT.

Section 23. of the Parliamentary regulations 1695. By A. S. 1711, § 14, in calumnious or litigious processes, the Court are directed to modify the expenses largely.—A. S. 6. Feb. 1806.—A. S. 4. Feb. 1809.—7. Feb. 1810.—4. July 1810.—23. Jan. 1811.—19. Nov. 1811.—19. Nov. 1812.—16. Nov. 1813.—and 12. Nov. 1825.

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#### FISHERY.

The statutes on this subject consist of two distinct classes: those which relate to fishing in the open sea

for whales, herrings, and other species of white fish ; and those relative to salmon-fishing in the rivers.

With regard to the first class, the Legislature gives protection and encouragement to fishermen in a variety of forms. The act 1661, *cap.* 39, “ for the fishings, “ and erecting of companies for promoting of the same,” incorporates all societies and members thereof into a body and corporation politic, to exercise the trade of fishing ; and grants to them full power,

To take and fish herring and white fish, in all and sundry seas, channels, firths, rivers, floods, lakes, and lochs of this his Majesty’s said ancient kingdom of Scotland, and isles thereunto belonging, wheresoever herring or white fish are, or may be taken, and to bring in and disburthen the saids herring and other white fishes, to all and sundry ports, harbours, shoars ; and to lay the same on the land, and to pickle them with salt, and to dry, and load the same in barrels and puncheons ; and for conservation of the saids herring and fishes, to build houses and little cottages, and other things necessary for the use of the said fishing trade, in whatsoever places shall be convenient, upon the payment of the allowance underwritten, unto the lord or master of the ground ; or otherwise, to sell, use, and dispose upon the saids herrings and other fishes to the inhabitants, to keep and conserve the same in their ships and boats, and to make and prepare them therein, and to carry and transport the same to forraign parts beyond seas, in ships and other vessels belonging to them, or his Majesty’s other subjects ; and to sell, use and dispose thereupon, to such who shall be in friendship and amity with his Majesty and his successors : With power also to the saids companies and societies *respectivè*, to elect and make choice of such of their own number as they shall think fit, for making and framing of laws, statutes and

rules, for the right regulating, managing and carrying on of the said trade of fishing, (the saids laws being alwayes approved and allowed by the council of trade,) and to punish transgressors accordingly : And that none be admitted to be counsellors of the saids societies, except such who shall enter of stock the sum of one thousand merks money foresaid, and that they be Scotsmen, or naturalized strangers, and residents within the said kingdom : And to the which council, so to be nominate and constitute, the said companies *respectivè* shall submit, and to all their acts, statutes and rules, especially, but prejudice of the generality foresaid, to the particular rules under-written : To wit ; first, That none after the erecting and setting of the said company or society may enter or come in but by consent of the company or the council thereof, after the said                      day of                      next, except they be appointed to be inrolleand taken in by the council of trade, to whom any person, in case of exclusion, may make his address. Secondly, That the return from foreign places upon the stock, may be all sold in free burghs and to free burgesses within this kingdom, by the saids companies or any of them or their factors, without any previous offer to the burgh ; providing they do not retail by selling less quantities nor five tun of wine, or the equivalent in value in other commodities ; and if the import and return shall be of less quantities, then and in that case these commodities shall only be sold in wholesale, without any retail whatsoever. Thirdly, That no herring or white fish taken by Scotsmen in the said kingdom or isles thereto belonging be sold, fresh or salt, to any but to natives, except by the companies *respectivè* : And that no stranger unnaturalized shall have any liberty to make and prepare herrings or white fish upon the land, or to make booths for that effect, under the pain of confiscation of what shall be seized upon, and the double thereof to be exacted of the seller, except they be free of one of the companies foresaid : With power also to the

said council to use and have a seal and gage for ilk company *respective*, wherewith all their barrels or puncheons may be marked, and that ilk barrel of green fish contain twelve gallons, which is to be the ordinar gage betwixt buyer and seller: And also to make use of, and employ all and sundry tolbooths and warding-houses, where necessity requires, for holding of courts, warding or punishing of transgressors, the burghs being alwayes free of the charges of the prisoners; and further, to depute such of their number as they think fit concerning all businesses and affairs, and to cognosce and determine in all questions and debates relating to the said trade of fishing; and to cause execute such decreets and sentences as shall be pronounced thereupon; and for that effect, to make choice of officers and servants, and to administer oaths to them, and amongst themselves, for the good of the trade; and if need be, with power to the said council to design certain judges under them in convenient places, to administer justice in the matter of the trade of fishing allanerly. And our Sovereign Lord, being most willing to cherish and encourage the foresaids societies and companies, in the said trade, hath out of his innate beneficence and royal bounty, ordained, and by the tenour hereof decerns and ordains, that salt, cordage, hemp, cork, pitch, tar, clapboard, knaple, skew-hoops, and Holland nets, imported for the trade of fishing foresaid, by the foresaids companies *respective*, is, and shall be, free of any custome or other imposition whatsoever; and that the herring and white fish taken, made or prepared therewith, are and shall be free of any manner of taxation or burden in the exportation of the same: And also, that all strangers fishers, who shall repair to this his Majesty's ancient kingdom, and will come and make their residence within the same, shall be naturalized by his Majesty, upon the desire and application of any of the saids councils, and shall be entered burgesses in any city where they shall reside, and shall be freed of all manner of taxation, for the

space of seven years next after their arrival: And further, his Majesty hath released and discharged, and by the tenor hereof *simpliciter* releases and discharges, the teind herring and teind fish, of all such herring and fish which shall be taken by the boats and fishers of the saids companies *respectivè*, or such who shall be hired by them in all time hereafter: And also, exoner and discharges the excise herring due to his Majesty (except the herring of Dumbar) for all the dayes, space, years and terms of nine years, next after the date hereof: And in like manner, his Majesty declares, That all ale, beer, strong waters, and other provisions for out-réeing of any vessel for the saids fishings of the said companies, is, and shall be free of all manner of impositions whatsoever, commanding hereby the lords and masters of the ground, in all places through the said kingdom where there is loch or other fishings, not only to protect, maintain and defend the said company and society, and all masters of ships, fishers and others whatsoever, going about the said trade, and belonging to the respective companies of fishing, from all harm, trouble or damage whatsoever, or else to satisfie and refund their losse and damage which they shall sustain upon their land; but also, that they nor none of them presume nor take upon hand to exact or levy any more from the saids fishers, merchants, or their servants, belonging to the saids companies, for ground-leave, but only twelve shillings Scots for every last; and that in full satisfaction of the Saturdayes fishing, or any manner of dues whatsoever: And for the greater encouragement of merchant-fishers, masters of ships and other vessels, and their servants, to attend the said trade of fishing, his Majesty, by his sovereign authority and prerogative royal, not only by these presents declares the ships, boats and other vessels, with their furniture, provided for, and in exercise of, the said trade of fishing, no wayes to be arrestable by any creditor, but that the same and those that shall serve therein shall

not be pressed to any public service, without his Majesty's particular command: And that the fishers, masters and servants, in the saids vessels, and makers of herring and white-fish, during the whole time of the said fishing, and their employment therein, shall be free from all actions, and no wayes convenable before any judge or judicatory whatsoever for any cause or causes civil, which may be intended against them; but also, by the tenour hereof, declares the saids fishers, masters and their servants above written, shall be free of all captions, arrestments or other attachments on their persons, or against their materials and instruments of fishing, during the time and season of fishing, they being actually serving therein allanerly: And further, that none who shall be upon the council, or any of the societies of trade foresaid, shall be lyable to cess, stents or taxations, for what stock they have entered or shall enter in the saids companies or societies *respectively*, or for the benefit and profit arising thereby in time coming: And it is hereby declared, that it shall be licent to any of the council or societies of the said trade of fishing *respectively*, for the good thereof, to dwell and reside in any part or place of this said kingdom, albeit they be burgesses in any burgh royal, and not thereby losse their freedom, notwithstanding of any act or acts in the contrair: And in like manner it is hereby declared, that no person or persons shall have liberty to export herring or fish, nor use or have the priviledges, liberties and immunities above written, but those that shall enter themselves and be free in one or other of the saids companies and societies: And finally, it is hereby statute and ordained, that those in the several shires and burghs of this kingdom, who shall enter in the saids companies and societies, conform to the tenour of this present act, shall give an account thereof to the Parliament, or his Majesty's council of trade for the time within

after the erection thereof, that the same may be recorded *ad futuram rei memoriam*.

The act 1690, *cap.* 34, "anent the fishery," declares,

That albeit the taking of fishes be allowed to all the lieges, without prejudice of men's particular properties; yet the exportation of fishes doth only belong to the merchants of the royal burrows, conform to the act of this present Parliament, which privileges are hereby no ways infringed: And their Majesties, with consent foresaid, do recommend to the Lords of their Majesty's Privy Council, to receive such overtures from the royal burrows, or others, and to interpose their authority to such of these overtures, as they shall find to be most convenient, and to conduce most for the better curing of fishes, and for the profit and honour of the trade.

The act 1705, *cap.* 2,

Authorises and empowers all her (Majesty's) good subjects of this kingdom, to take, buy, and cure herring and white fish, in all and sundry seas, channels, bays, friths, lochs, rivers, &c. of this her Majesty's ancient kingdom, and islands thereto belonging, wheresoever herring or white fish are or may be taken; and for their greater conveniency, to have the free use of all ports, harbours, shores, fore-lands and others, for bringing in, pickling, drying, unloading, and loading the same, upon payment of the ordinary dues where harbours are built: That is, such as are paid for ships, boats, and other goods, and discharges all other exactions, as a night's fishing in the week, commonly called Saturday's fishing, top-money, stallage, and the like: And for the better advancing and carrying on the said trade, her Majesty, with consent foresaid, ordains and enacts, That all the barrels made use of by the said fishers shall be of the largeness, goodness and quality, and marked as is prescribed by the fifth act of the fourth session of the first Parliament of William and Mary, and that all the herring or white fish put into them shall be pyned, cured and packed from the bottom to the top with fo-

reign salt allenarly : And further, it is ordained in manner foresaid, That no salmon, herring, or white fish, be shipped or transported from this kingdom to foreign countries, but such as are made by the subjects of this kingdom, and marked with the seal of the maker and merchant exporter thereof, to the effect it may be known who has made the same ; and the collectors and other officers of the customs are hereby commanded to take and seize all salmon, herring, or white fish, that shall be shipped in their several precincts for exportation, unless made and marked as aforesaid ; and to prevent the counterfeiting of the foresaid marks, her Majesty, with consent foresaid, does allow any company, society, or single person, to use and appropriate to themselves any particular mark to be used by them upon salmon, herring, or white fish, by and attour the common mark and burn of the port from whence they are exported, and to registrate their taking and using such a mark in the public register at Edinburgh : And her Majesty, with advice and consent of the said Estates, strictly prohibits and discharges all other companies, societies, or persons, to assume or use the mark of any company, society, or person so registrate ; certifying such as do in the contrary, they shall be liable to the company, society, or person to whom the mark belongeth, in the sum of five hundred merks, *toties quoties* : And it is hereby declared, That it shall be lawful to the sheriffs, bailies of regalities, and magistrates of burghs, or any having commission from them, not only to visit on all occasions the curing and packing of herring, or white fish, in their respective bounds, and also to pitch upon any barrel after it is made up and marked, and cause break open the same, and raise the herrings, if they think fit, from the very bottom ; and in case they be not cured or packed as above ordained, or that they be broken, bruised, spilt, or not gutted herring or fish upon them, the said sheriffs, bailies, magistrates, or others commissioned by them, after the same is clearly proven by



experienced and famous witnesses, are hereby ordained to secure the whole casks, where the said unsufficient herring or white fish shall be found, and the persons to whom they belong shall pay for each last one hundred merks Scots, the half to be given to the discoverer, and the rest to the poor of the parish, and proportionally for smaller quantities of such unsufficient herring or white fish; and the said unsufficient herring or fish shall be discharged to be exported at any time thereafter.

It further declares,

That all foreigners, or stranger fishers, who shall be employed by any of the foresaid particular persons or societies, and reside in this nation, shall enjoy all the privileges of free-born subjects during their said residence: And also statutes and ordains, That cordage, hemp, cork, pitch, tar, plank, board, knappel, skows, hoops, Dutch-nets, and all other materials to be imported for the trade of fishing, shall be free of custom, or any other imposition whatsoever; and that the herring or white fish taken, cured and packed as aforesaid, are, and shall be free of any manner of duty or taxation to her Majesty on the exportation of the same: And further, her Majesty, with consent foresaid, ratifies and approves all former laws and acts of Parliament made anent the slaying and destroying of red fish, smolts, and fry of salmon, and hereby requires and commands the judges therein mentioned to put these laws to due execution; and for that effect to hold courts twice a-year, at Pasch and Michaelmas yearly, at the ordinary place of such courts within the jurisdiction, and to fine the delinquents, and exact the fines without abatement, or punish the delinquents personally if insolvent; certifying such judges as shall fail to hold courts, and uplift the fines, or punish delinquents, as said is, after their being required thereto personally, under form of instrument, by any heritor or other person concerned, they shall be liable in the

sum of five hundred merks, *toties quoties*, to belong to the person who shall pursue the judge so failing, or refusing to do justice in manner above expressed : And it is hereby declared, That such processes, as shall be commenced before the Lords of Session for that effect, shall be discussed summarily, without abiding the course of the roll, empowering the said Lords to modify the expense of plea, by and attour the penalty: And siklike, the officers of the independent company, and other officers of her Majesty's forces, are hereby required to apprehend the persons of delinquents, that may be either found guilty, or declared fugitive, and that upon the warrant or orders of the judges ordinary, for their serving as recruits, conform to the thirty-third act of the sixth session of King William's Parliament; and also strictly prohibits and discharges all fishing of salmon from Saturday at twelve of the clock at night to Sunday at twelve of the clock at night : And because all manner of salting of fish for export with Scots salt is hereby discharged ; Therefore her Majesty, with advice and consent foresaid, strictly prohibits and discharges the importation of all English or Irish salt, from and after the first day of October next to come, under the penalty of one thousand merks Scots money, to be exacted from, and paid by the seller, importer, and buyer, *toties quoties*, and confiscation of the ship, bark and boat wherein it is imported ; and in case of importing the same upon horses, confiscation both of horses and salt, and the carrier to be fined in twenty pounds Scots, and punished in his person by twenty days' imprisonment; and any person having commission from the salt-master, or any of them, is empowered to seize the said salt, ships, barks, boats or horses, and to pursue the contraveners hereof before any magistrate or justice of peace whatsoever, who are hereby empowered and required to put the same to due execution : Declaring, That the one-half of the said fines and seizures shall belong

to the apprehenders and pursuers, and the other half to the poor of the parish where the transgression is committed.

In Article VIII. of the treaty of Union, there is the following clause :

And that, from and after the Union, the laws and acts of Parliament in Scotland, for pyning, curing, and packing of herrings, white fish and salmon, for exportation with foreign salt only, without any mixture of British or Irish salt, and for preventing of frauds in curing, and packing of fish, be continued in force in Scotland, subject to such alterations as shall be made by the Parliament of Great Britain : And that all fish exported from Scotland to parts beyond the seas, which shall be cured with foreign salt only, and without mixture of British or Irish salt, shall have the same eases, premiums, and drawbacks, as are, or shall be allowed to such persons as export the like fish from England : And that, for encouragement of the herring fishing, there shall be allowed and paid to the subjects inhabitants of Great Britain, during the present allowances for other fishes, ten shillings five-pence Sterling, for every barrel of white herrings which shall be exported from Scotland.

The act 7. of Q. Anne, *cap.* 10, contains regulations for the better ascertaining and securing the allowances given by the articles of Union to those who export fish from Scotland cured with foreign salt.

Article XV. of the treaty of Union makes the following provision : That £.2000 *per annum*, for seven years, should be applied towards the encouraging the manufacture of coarse wool, “ and afterwards the same “ shall be wholly applied towards the encouraging and “ promoting the fisheries, and such other manufactures

“ and improvements in Scotland as may most conduce  
“ to the general good of the united kingdom.” And  
the act ratifying the treaty of Union empowers her Majesty to appoint commissioners for carrying this part of it into effect, who shall be accountable to Parliament.

The statute 13. of Geo. I. *cap.* 29, declares it lawful for his Majesty, by letters patent under the Great Seal of Scotland, to point out a method whereby the funds due by 5. of Geo. I. *cap.* 20, for improvement of the fishery and manufactures in Scotland, shall be applied, agreeably to the XV. Article of the treaty of Union above referred to.

There are various statutes for the encouragement of the whale fishery, to which it will be sufficient to allude in the order of their dates ; and there are several also for encouraging the British fisheries in general, which may be noticed in a similar manner.

The act 9. of Geo. II. *cap.* 33, § 4, declares, That  
“ no fishermen or other person or persons whatsoever  
“ shall, with trunks, hoopnets, or any other way, take,  
“ kill, or destroy any lobsters on the sea-coast of Scotland from the first day of June to the first day of  
“ September yearly, under the penalty of L.5 Sterling  
“ for each offence, to be recovered by any person who  
“ shall inform, or sue for the same, upon a summary  
“ complaint before any two or more of his Majesty’s  
“ justices of the peace for the shire on the coast where  
“ any such offence shall happen to be committed.”

Act 5. of Geo. II. *cap.* 28, “ for encouraging the  
“ Greenland fishery.”

Act 6. of Geo. II. *cap.* 33, " for the further encouragement of the whale fishery carried on by his Majesty's British subjects," declares, That besides exemption from customs, and a licence to proceed on the voyage, all ships employed in this trade are to receive a bounty of twenty shillings *per* ton on their return.

Act 28. of Geo. II. *cap.* 20, *inter alia*, " for continuing, explaining, and amending the several acts of Parliament made for the further encouragement of the whale fishery carried on by his Majesty's subjects."

Act 4. of Geo. III. *cap.* 22, for the same object.

Act 23. of Geo. II. *cap.* 24, " for the encouragement of the British white herring fishery : " explained, amended, and rendered more effectual by 26. of Geo. II. *cap.* 9, and 28. of Geo. II. *cap.* 14.

Act 29. of Geo. II. *cap.* 23, " for encouraging the fisheries in that part of Great Britain called Scotland."

Act 5. of Geo. III. *cap.* 22, " for the further encouragement of the British white herring fishery."

Act 11. of Geo. III. *cap.* 31, for the same object ; as also 12. of Geo. III. *cap.* 58 ; and 19. Geo. III. *cap.* 26.

Act 22. of Geo. III. *cap.* 19, " for granting an additional bounty on ships employed in the Greenland whale fishery for a limited time."

Act 25. of Geo. III. *cap.* 65, " for the further encouragement of the British fisheries."

Act 26. of Geo. III. *cap.* 41, " for the further support and encouragement of the fisheries carried on in the Greenland seas and Davis Straits."

Act 26. of Geo. III. *cap.* 81, “ for the more effectual encouragement of the British fisheries ;” continued and amended by acts 35. of Geo. III. *cap.* 56, and 38. of Geo. III. *cap.* 58.

Act 26. of Geo. III. *cap.* 106, “ for incorporating “ the British Society for extending the fisheries, and “ improving the sea-coasts of this kingdom ;” and extended by act 27. of Geo. III. *cap.* 10.

Act 32. of Geo. III. *cap.* 22, “ to continue and “ amend several laws relative to Greenland and Davis “ Straits fisheries.”

Act 39. of Geo. III. *cap.* 100, “ to revive and continue till the end of the next session of parliament “ 35. of Geo. III., to continue and amend 26. of Geo. “ III. *cap.* 81, and to amend 26. of Geo. III. *cap.* “ 106.” This act amended, and continued till 5th April 1801, by 39. and 40. of Geo. III. *cap.* 85 ;—to 25. March 1808, by act 47. of Geo. III. (2d session,) *cap.* 51 ;—to 25. March 1809, by act 48. of Geo. III. *cap.* 86 ;—and to 25. March 1811, by act 50. of Geo. III. *cap.* 54.

Act 44. of Geo. III. *cap.* 86, *inter alia*, “ for reviving, amending, and further continuing several “ laws relative to the more effectual encouragement of “ the British fisheries until 5. April 1806.”

Act 1. of Geo. IV. *cap.* 108, “ for the further encouragement and improvement of the British fisheries.”

## SALMON-FISHING.

The right of salmon-fishing is derived from the Crown, either by a special grant, or a clause in the title-deeds of the adjoining lands. And the right, when bestowed, must be exercised under various restrictions. Without these restrictions, the right might be rendered useless in consequence of injurious or destructive modes of fishing in those rivers by which two or more properties are intersected or bounded.

The act 1424, *cap.* 10, is directed against slaying salmon in forbidden time.

Quhasaever be convict of slauchter of salmonde, in time forbidden be the lawe, he sall pay fourtie schillinges for the unlaw. And at the third time, gif he be convict of sik trespassse, he sall tyne his life, or then bye it. And gif onie man be infest to fish in forbidden time, al sik priviledges sall cease for three zeires to-cum. And gif onie dois the contrair, he sall tine aye hundreth shillinges for the unlaw before the justice: upon the quhilk trespassse, the Justice-Clerk sall inquire, at the receiving of the indimentes, as of uther poyntes belangand his office.

The act 1424, *cap.* 35, shews what are the forbidden seasons.

It is ordained be the Parliament, and forbidden be the King, that onie salmound be slaine, fra the feaste of the Assumption of our Ladie, quhill the feaste of Saint Andrew, in winter, nouthir with nettes nor cruves, nor nane utherwaies, under the paine put upon slayers of read fish, quhilk alsua the Justice-Clerk sall gar inquire.

The acts 1424, *cap.* 11, and 1477, *cap.* 74, are very

precise in requiring the total destruction of cruives in all waters where the sea ebbs and flows ; and in restricting the use of them in fresh water. The latter of these acts declares :

That all cruves set in waters, quhair the sea fillis and ebbis, destroyis the frye of all fisches, be put away and destroyed for ever mair : notwithstanding ony freedome or privilege given in the contrair, under the paine of five pund of ilk cruve : and that they that hes cruves in fresh waters, that they gar keep the lawes anent Satterdies slop, and suffer them not to stand in forbidden time, under the samin paine. And that ilk heck of the said cruves be three inch wide, as the auld statute requiris, maid be King David, and that the mid streme be left free be the space of sex fute. And that it sall be a poynt of dittay, baith of them that dois the contrair, or garris be done : and quha that beis convict thereof, to pay 5 pund, as said is.

The act 1449, *cap.* 8, fixes the penalties for slaying salmon in forbidden time. It is as follows :

It is ordained, that quha sa beis convict of slauchter of salmon in time forbidden be the law, sall pay fourtie shillinges, but remission the first time. And the seconde time soure poundes. And at the third time he sall tene his office for ever. And alsua he that garris slaie or mainteinis the slayer, or is airt or pairt of the deede doing, sall be demained, as the principall doers. And gif onie man be infest of freedome to fish in forbidden time, sik freedome sall cease for seven zeires to cum. And gif onie dois in the contrarie, he sall paie an un-law before the justice ; upon the quhilk trespasse, the justice-clerke sall inquire at the receiving of the indictments, as of other poyntes belangand his office.

The act 1457, *cap.* 85, is of a similar import. And



the act 1457, *cap.* 86, prohibits any person from setting creels in water to catch red fish.

The act 1469, *cap.* 38, is as follows :

For the multiplication of fish, salmond, girsilles and trowtes, quhilk ar destroyed be cowpes, narrow masse, nettes, prynes set in rivers, that hes course to the sea, or set within the flude marke of the sea : It is advised in this present Parliament, that all sik cowpes and prynes be destroyed and put away for three zeires ; and quha sa haldis them up, sall be indited, and punished be the Kingis justice in his justice aire, as destroyers of redde fish, after the tenour of the act of slaughter of redde fish last maid of before. And in likewise all millares, that slayis smoltes with creilles, or ony uther manner of way, sall be punished be the Kinges lawes, after the tenour of the said acte, maid upon the slauchter of redde fish. And that ilk schireffe within his schire sall destroy and cast downe the said instrumentes, cowpes, prynes, and narrow masses, nettes, creilles, or ony uther sik-like.

All these statutes are ratified by the act 1489, *cap.* 15, “ with this addition :”

That letters be written to all schireffes, baillies and stew-ardes, to destroy, cast downe, and put away all the cruves within their bounds incontinent without delay : And that dittay be tane upon them that hes cruves in the contrair the said acte : and to pay for ilk cruve five pound for amerciament in the justice aire, to be raised on the maker and uphalder of the samin : And in likewise the schireffe that failzies, to be in amerciament of twentie pound to the King in the justice aire, and to be a poynt of dittay, as said is : And anent the cruves that standis in fresh waters, that they stand not in forbidden time : And let the mid-streame be alway free, be the space of five fute : And that the Setterdaies

slop be observed and keiped, as the acte and statute maid be King David requiris : And that ilk heck of the said cruves be five inche wide, according to the samin statute : And as for millers, that settis creilles and nettes in dammes, milnelandes, and waters, destroyand read fish, and fry of fish, as said is, sall be a poynt of dittay : And the paine baith of causer of creilles, nettes, and of the millers, ilk ~~ane~~ of them that dois in the contrair, to incur the unlaw of read fish, and to be taken of them that dois in the contrair : And that letters be written, as said is, to the schireffes, stewardes, and baillies, to put this act to execution, and see that the samin be observed and keiped, under the paine of twentie pound, to be raised upon the officiares that failzies, as said is : And as touching the slauchter of read fish, that it be punished after the forme of the statute, declairand the unlaw thereof ten pound.

The act 1503, *cap. 72*, is as follows :

Anent the slauchter of redde fishe in forbidden time, because the littil unlaw thereof hes bene the cause and occasion, that the redde fish hes bene slaine in great number, to the great heir-ship of the cuntrie, and the destruction of the commoun weill : And als anent the slayers of smoltes in milne-dames, clowses, and be nettes, thornes, and cruves : It is statute and ordained, that the unlaw thereof in time to cum be ten pounce for the first time : The second time, twentie pounce : And the third time, tinsel of life to the committer : And als it sall be leiffull to the baronne, baith spiritual and temporal, baith in the royaltie and regalitie, to proceed and sit hereupon in their courtes, and to have ane unlaw of ilk one that beis convict of ony poynt foresaid, of threttie shillings : And gif ony person or persones claimis to have sik priviledges to slaie sik fish in forbidden time, be ony of the waies foresaid, that all sik priviledges cease, unto the time that they cum before the King and Lords and schaw

their said priviledge, that they may be considered, quhidder sik priviledges be for the commoun weill, or not.

The act 1535, *cap.* 16, limits the time for killing salmon. It declares,

That it sall not be lesum to the thesaurer and composituores in times cumming, to compone or fine in judgement, or out of judgement, with the breakers of the saidis actes, for lesse then the paine and unlaw contained in the samin : And that dittay be tane upon all them that ar airt and pairt, causers or receipters of the slaying of the said reade fish, smoltes and salmonde in forbidden time, sik-like as upon the principall slayers thereof : And because the lang delay of justice aires gives greate occasion of the breaking of the saidis actes : Therefore the Kingis Grace sall send ane commission generally, with the justice-clerke, and sik uther persones as sall please his Grace to depute thereto, for halding of particular diettes zeirly, in the places quhair the said fish ar slaine, and ordains all sik persones to be arreisted to the first aire, to compeir under the paine of rebelloun and putting of them to the horne ; and gif they compeir not, to put them to the horne, and denunce them our Soverain Lordis rebelles : And that sik ordour of arreistment of sik persons be keiped, as it were in a general aire.

The act 1535, *cap.* 17, declares, “ That the receipters and assisters to such persons” (as kill in forbidden time, &c.) “ incur siklike pains as the principals ; “ and that sicklike process be had against them, as is “ devised and statuted against the slayers of red fish, “ salmon and smolts.”

The act 1563, *cap.* 68, ratifies prior statutes, “ with “ this addition following :”

That is to say, that all cruves and zaires, that ar set of late upon sand, and schauldes, far within the water, quhair they

were not of before, that they bee incontinent tane downe and put away, and the remanent cruves that ar set and put upon the water sandes, to stande still quhill the first day of October nixt to cum, and incontinent after the said first day, to be destroyed and put away for ever : And for execution of this act, ordainis everie earle, lord, barronne, and everie gentleman landed, within his awin boundes, to cause remove, destroy, put downe, and take awaye the saidis cruves and zaires, in manner forsaide, *respectivè*, under the paine of ane hundreth poundes to bee taken up of their gudes, that puttis not this act to dewe execution, and the said summe to be in-brocht and applyed to our Soveraine Lady's use, and that everie schireffe, stewarde, baillie, alsweill of regaltie as royaltie, their deputes and uthers judges within their awin jurisdictiones, take gude attendance and see, that as is contened in this present acte be done, and put to execution in all poyntes, according to the tenour of the samin : And failzieing thereof, that everie schireffe, steward, baillies, alsweill of regalities as royalties, and other judges, within their awin jurisdiction, as saide is, up-take and in-bring the saide paine of ane hundreth poundes of everie earle, lorde, barronne, gentleman landed, or uthers negligent in the premisses, and make compt thereof zeirlie in the checker : And gif the saidis schireffes, stewards, baillies of regalities or royalties, beis foundin negligent in execution of their offices, anent this acte, that the foresaid summe be up-lifted of themselves, and in-brocht to our Soveraine Ladie's use, and that but prejudice of the paines to be execute upon the foresaidis earle, lorde, barronne, gentleman, or uther contraveners of the foresaide acte : Providing alwayes, that this acte on na-ways be extended to the cruves and zaires being upon the water of Solway.

The act 1579, *cap.* 89, complains that these several statutes had not received due execution. It

Therefore ordainis the saidis actes to be extended, and have effect and execution in time cumming, against the transgressours thereof, after the forme and tenour of the same: As alsua against the slayers of the saidis reid fisch, in forbidden time, be blesis, casting of wandes or otherwise: or that destroyes the smoltes and frye of salmound in mil-dammes, or be polkes, creilles, trammel-nets, and herrie-waters: And that the landes-lord, and awners of the saidis cruves and zaires, betuixt and the first day of March nixt to-cum, put doun, and hald doun the saidis cruves and zaires, conforme to the saidis actes, and under the paines contained therein; and gif they failzie therein, the said day being by-past, ordainis and commandis his Hienes thesaurer, to persew and up-take the saidis paines: And als ordainis the schireffes, stewardest, and baillies in the schires, and lordes of regalities, quhair the saidis cruves and zaires ar, and the provestes and baillies of the nixt burrowes conjunctlie and severallie, to pass with convocation of his Majesties lieges, to cast doun and destroy the saidis cruves and zaires, and hald them doun, as they will answer to our Soveraine Lord, upon their obedience: And gif neede be, that letters be direct against them, to that effect, within ten dayis, under the paine of rebellion, and gif they failzie, to put them to the horne; and this act to serve for sufficient commission to the saidis schireffes, stewardest, baillies, lordes of regalities, provestes, aldermen, and baillies of burrowes, to the effect foirsaid; and that they nawaies sall be called nor accused theirfoir, nor incur ony skaith or danger therethrow in time cumming; and commanding all our Soveraine Lordis lieges to rise, concur and assist to the saidis schireffes, stewardest, baillies, and their deputes, provestes, aldermen, and baillies of burrowes, and their officiars, in putting the said act to execution in all poynts, after the tenour theirow; and for punischment of the slayers of reid fische, in forbidden time, be blesis, casting of wandes, or utherwise, or destroyers of the smoltes,

and frye of salmound in mill-dammes, or be polkes, creilles, trammel-nettes, and herrie-waters, that the schireffes, stew-ardes, baillies, and lordes of regalities, within their awin jurisdictions, proceede as ordinar justices, and uptak and execute the paines and escheittes, the twa pairt to the Kingis Majesties use, and the thrid to themselves, for their travelles; and quhair the offenders hea na geir worth the paines, to put and hald them in prison, stokkes, or irones, for the space of ane moneth, upon their awin expenses, or gif they have it not, on bread and water.

The act 1581, *cap.* 111, containing the appointment of various noblemen and gentlemen as justices of the peace, for carrying into execution the laws for preservation of fishings, is in desuetude; Bor. of Stirling, 20. Nov. 1798, Mor. 14299.

The act 1594, *cap.* 224, for execution of the acts against slaying salmon, &c. declares,

That it sall be lauchfull to the provest and baillies of everie burgh in time cumming, to proceede against the contraveeners of the saidis acts, gif they sall happen first to attache and apprehend them, before they be challenged be the schireffe or his deputes: notwithstanding that be the former actes, the said power was restricted to the saidis schireffes.

The act 1597, *cap.* 261, declares,

That all and sindrie earles, lordes, barronnes, gentle-men, and free-holders, havand land nixt adjacent to the waters and rivers, quhairin salmonde fish ar taken and slaine, within all the partes and boundes of this realme, sall, according to the general bande, finde caution and sovertie, acted in the buikes of counsell, that they, and everie ane of them sall be answerable for their awin tennentes and in-dwellers within their landes, and for all uthers within their boundes, sa farre as their landes extendis, quhome they may stop or le

conforme to the generall bande, that they sall not slay ony salmond fishe, in forbidden time, with cobill, net, speare, wand, creil, pock, or ony uther kinde of ingine : The earle and lord, under the paine of ane thousand markes : The barronne and gentleman, and uthers quhat-sum-ever awners of waters and landes, under the paine of five hundreth markes; the ane halfe of the saidis paines, in case of contravention, to be up-lifted to his Majesties use ; and the uther half to the judges contained in the former acts ; and that letters of horn-ing be directed at the instance of the saids judges, and charge the saidis earles, lordes, gentlemen, and free-halders, to finde the said soverties, acted in manner foresaid, exceptand furth of this present act the waters of Annand and Tweid.

By the act 1600, *cap.* 11, slaying of salmon contrary to the statutes is declared to subject the offender to the pains of theft.

And the act 1606, *cap.* 5, ratifies this statute, and declares,

That in all tyme comming, the contraveiners of the said act, or ony part thereof, in the waters of Tweed or Annand, or any part of the samine, shall underly the paines foresaid of thift and death, according to the qualitie, rank and estate of the committers thereof, and as if the first act had bene generall, and the said exception had never bene contained therein.

In the act 1685, *cap.* 20, “ for preserving game,” there are the following clauses :

And whereas, by the 11th act, Parl. 1. King James I., cruives and zairs set on fresh water without expresse infestments of salmon-fishing are ordained to be destroyed and put away for ever ; and that where cruives are allowed by infestments, that ilk heck be three inches wide, which is ratified

by the 73d act, Parl. 10. King James III., and by the 87th act, Parl. 14. King James II., it is statute that no man set vessels, creels, weirs, nets, or any other engine to hinder smolts from going to the sea; and that coups, masses, nets, prins set on waters that has course to the sea, be destroyed, and who holds them up to be liable as destroyers of red fishes: *Item*, That all millers that slay smolts or trouts with creels or any other engine, or any who dams or laves, shall be punishable as slayers of red fish, conform to the 73d act Parl. 5. King James III.; and when the transgressors has no means, they are appointed to be put in prison, irons or stocks, for the space of one month, upon their own expenses; and, if they have it not of their own, to be fed on bread and water, conform to the 89th act, Parl. 6. King James VI.: Ordaining hereby the masters of our game to require all heritors and others to throw down all cruives and zairs set on fresh waters, without express infetment of salmon-fishing.

And the act 1696, *cap.* 33,

Ratifies, confirms, and approves the haill former laws and acts of Parliament made anent the killing of salmon, kipper, and black-fish in forbidden times, and the killing and destroying of the fry and smolts of salmon; and hereby strictly commands and requires the several judges to whom the execution of the foresaid laws is committed, to execute the same with all rigour, and to exact the penalties allowed by law, as they will be answerable at their highest peril: and in case any persons, who shall be found guilty of the contravention of any of the former acts made against killers of kipper, or black-fish, or destroyers of the fry or smolts of salmon, shall not be able to pay the pecunial fines allowed by law, that the judge before whom the person so guilty shall happen to be convict, may punish the delinquent corporally, or by ba-



nishment, as he shall think fit; or otherwise, if the delinquent be found fit to serve in the recruits, that he be delivered to any of the officers of his Majesty's forces, for the use of his Majesty's service. And further, his Majesty and Estates of Parliament, (for the more effectual discovery of the persons guilty of killing of kipper, or black-fish, and destroying the fry and smolts of salmon,) do hereby allow the half of the fines to be imposed by virtue of this or former acts to be paid to any person who shall make discovery of the delinquents. And in respect that the salmon-fishing within this kingdom is much prejudged by the height of mill-dams, that are carried through the rivers where salmon are taken, his Majesty, with consent of the Estates of Parliament, ordains a constant sloop in the mid-stream of each mill-dam dike, and if the dike be settled in several grains of the river, that there be a sloop in each grain (except in such rivers where cruives are settled,) and that the said sloop be as big as conveniently can be allowed, providing always the said sloop prejudice not the going of the mills situate upon any such rivers: Likeas, his Majesty, with consent foresaid, discharges all fishing at such mill-dam dikes, with nets stented, or otherwise, or any other engines whatsoever, under the pains inflicted by this and former acts against killers of black-fish, and destroyers of the fry of salmon.

Erskine, II. 6. 15.—Stair, II. 3. 69.—Tait's Justice of Peace, p. 160.—See acts 1617, *cap.* 8; and 1661, *cap.* 38.

## DECISIONS.

Report of the Committee of the House of Commons, 17. June 1824.

Duke of Queensberry, 19. Nov. 1771, Mor. 14279.—Colquhoun, 21. Dec. 1793, and 4. July 1804, *ib.* 14281.—Dirom, 25. Nov. 1797, *ib.* 14282.—Earl of Fife, 1807, *ib.*

App. 2. v. "*Salmon Fishing*."—Earl of Kinnoul, 26. Jan. 1802, affirmed 9. May 1804, *ib.* 14301.—Duke of Athol, 7. March 1812, Buchanan's cases, 254, affirmed 20. June 1816, Dow, V. 282.—Magistrates of Dumbarton, 16. Jan. 1813, F. C. affirmed 19. June 1816.—Scott, 11. Dec. 1812, F. C.—Duke of Athol, 16. Dec. 1826, S. & D. V. 153.—Earl of Kintore, 31. May 1826, *ib.* IV. 641.—Chisholm, 17. June 1801, Mor. App. 1. v. "*Salmon Fishing*."—Forbes, 31. May 1826, F. C.—S. & D. IV. 650.—Lord Banff v. Earl of Fife, 21. Jan. 1783.—Lord Halkeston v. Scott, 4. July 1769.—Fishers of Don v. Town of Aberdeen, 26. Jan. 1665.—Fishers of Northesk v. Scott, 16. July 1746.—Earl of Kinnoul, 18. Jan. 1814, F. C.—Copland's Trustees, &c. 13. June 1810, *ib.*

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## FORESTS.

There are several statutes directed against those who destroy game, or pasture cattle, in the King's Parks or Forests. Acts 1535, *cap.* 12,—1579, *cap.* 84,—1592, *cap.* 128. and 180,—1594, *cap.* 210. The more effectually to enforce these acts, the statute 1617, *cap.* 18.

Ordains in all time comming, that the keepers of the saids forrests, and others, having right by their infestments, as said is, shall have full power, priviledge, and jurisdiction, to call, conveene, and pursue before them, whatsoever person or persons, that shall be found hereafter to transgresse the saids acts and statutes, sit, and hold courts thereanent, and to put them to the tryal of an inqueist: and being found guilty, to put the saids acts to full execution in their contrair,

after the forme and tennour thereof in all points : to wit, the slayers and shooters of deer, ræe, and wilde fowls, being landed-men, under the pain of five hundreth marks, and every unlanded-man, being responsible, under the paine of one hundreth marks, and if he be not responsible, under the pain of warding and punishment of his person, conforme to the former acts made thereanent : and the owners and in-putters of the goods and bestial, within the saids forrests, and cutters of wood, under the paines contained in the former acts made thereanent, and conforme to the provision of the same acts.

And the statute 1685, *cap.* 20, revives various laws for the preservation of game, and, *inter alia*,

The 11th act of the 4th Parliament of King James V., and 210th act of the 14th Parliament of King James VI., by which letters are ordained to be direct, charging all keepers of his Majesty's forests to permit no pasturage within the marches of the forests, but that they seize and escheat them under the pain of loss of their office : and that foresters of forests belonging to private men shall apprehend such as travel with guns or dogs in forests, and carry them to the nearest sheriff, stewarts of stewartries, baillies of bailliaries and regalities, or justices of peace, to be secured, to answer as accords of the law : and, that all such of the lieges who shall be required to concur to apprehend such persons, give ready obedience, as is ordained by the forest laws, *cap.* 15. and 22, and those who conceal them, be fined as art and part of the said fault.

Erskine, II. 6. 14.

Case of Marquis of Athol, 24. July 1680, Mor. p. 4653.

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FRIENDLY SOCIETIES.

These societies have been encouraged by the Legislature, and the objects of them promoted by several enactments. Those statutes which relate to Scotland are as follow :

The act 33. of Geo. III. *cap.* 54, “ for the encouragement and relief of friendly societies,” is as follows :

“ Whereas the protection and encouragement of friendly societies in this kingdom, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity, is likely to be attended with very beneficial effects, by promoting the happiness of individuals, and at the same time diminishing the public burdens :” May it therefore please your Majesty that it may be enacted, and be it enacted, &c. That it shall and may be lawful to and for any number of persons, in Great Britain, to form themselves into, and to establish one or more society or societies of good fellowship, for the purpose of raising from time to time, by subscriptions of the several members of every such society, or by voluntary contributions, a stock or fund for the mutual relief and maintenance of all and every the members thereof in old age, sickness, and infirmity, or for the relief and maintenance of all and every the widows and children of deceased members ; and to and for the several members of each such society, or such number of them as shall be nominated a committee for that purpose, from time to time to assemble together, and to make, ordain and constitute such proper and wholesome rules, or-

ders, and regulations, for the better government and guidance of the same, as to the major part of such society, or such committee thereof, so assembled together, shall seem meet, so as such rules, orders, and regulations shall not be repugnant to the laws of this realm, nor any of the express provisions or regulations of this act; and to impose and inflict such reasonable fines and forfeitures upon the several members of any such society who shall offend against such rules, orders, or regulations, as shall be just and necessary for duly enforcing the same, to be respectively paid to such uses, for the benefit of such society, as such society by such rules, orders, or regulations shall be direct; and also from time to time to alter and amend such rules, orders, and regulations, as occasion shall require, or to annul and repeal the same, and to make new rules, orders and regulations in lieu thereof, under such restrictions as are in this act contained.

II. Provided always, and be it further enacted by authority foresaid, That all such rules, orders and regulations, with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering or amending thereof, shall be exhibited in writing to the justices of the peace assembled at the general quarter sessions of the peace, or at any adjournment thereof, in and for the county, riding, division or shire where such society shall be established, and such rules, orders and regulations shall be subject to the review of such justices, who shall and may after due examination thereof, at the then, or the then next subsequent session, annul and make void all such rules, orders and regulations, as shall be repugnant to this act, and shall allow and confirm all such rules, orders and regulations, as shall be conformable to the true intent and meaning of this act; and after the confirmation thereof by such justices, all such rules, orders and regulations, so confirmed, shall be signed by the clerk of the peace at such ses-

sions, and a duplicate thereof, being first fairly wrote on parchment, shall be deposited with the clerk of the peace at such sessions, to be by him filed with the rolls of the sessions there, without any fee to be paid for any matter or thing relating to the same; and such rules, orders and regulations, approved of and confirmed by the justices, and filed as aforesaid, shall be binding upon all parties during the continuance of the same; and no such society, which shall hereafter be established, shall be deemed or taken to be within the intent and meaning of this act, until good and competent rules, orders and regulations, for the government thereof, shall have been confirmed by the justices, and filed as aforesaid, according to the direction of this act before mentioned; nor shall any such society, which hath already been established for the purpose aforesaid, be, or be deemed or taken to be, within the intent and meaning of this act, unless all the rules, orders or regulations, under which such society is thereafter to be governed, shall be exhibited and confirmed in manner aforesaid, and shall be filed at the general quarter sessions of the peace, or at any adjournment thereof, to be holden in and for the county, riding, division, or shire, where such society hath been established, at some time before or immediately next after the feast of St Michael 1794.

III. Provided also, and be it further enacted by the authority foresaid, That no rule, order, or regulation confirmed by the justices of the peace in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, in writing, signed by the secretary or clerk of such society in pursuance of a requisition for that purpose, by three or more of the members of such society, and publicly read at the two usual meetings of such society, to be held next before such general meeting, for the purpose of such alteration or repeal, unless a committee of such mem-

bers shall have been nominated for that purpose, in which case such committee shall be convened in like manner, and unless such alteration or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose, and such alteration or repeal shall be subject to the review of the justices at such general quarter sessions of the peace, or at any adjournment thereof, as aforesaid, and shall be filed in the manner herein-before directed; and that no such rule, order, or regulation shall be binding, or have any force or effect, until the same shall have been agreed to, and confirmed by such justices and filed as aforesaid.

IV. And be it further enacted, That every such society shall and may, from time to time, at any of their general meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such persons into the office of steward, president, warden, treasurer or trustee of such society as they shall think proper, and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such institution, for such space of time, and for such purposes, as shall be fixed and established by the rules and regulations of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer or treasurers, trustee or trustees, and all and every other officer or officers, or other persons whatever, who shall be appointed to any office in any wise touching or concerning the receipt, management or expenditure of any sum or sums of money collected for the purpose of any such society, before he or they shall be admitted to take upon him or them the execution of any such office or trust, shall (if required so to do by the rules or regulations of such society to which such office shall be

long,) become bound with two sufficient sureties for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules, orders and regulations of such society, and in all matters lawful to pay obedience to the same, in such penal sum or sums of money as by the major part of such society, at any such meeting as aforesaid, shall be thought expedient, and to the satisfaction of such society; and that every such bond or bonds to be given by or on the behalf of such treasurer or treasurers, trustee or trustees, shall be given to the clerk of the peace of the county, riding, division or shire, where such society shall be established for the time being, without fee or reward; and in case of forfeiture, it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of the said society; and every such bond or bonds to be given by any other person or persons appointed to any such other office or trust as aforesaid, shall be given to the treasurer or treasurers, trustee or trustees as aforesaid, of such society for the time being, to be by him or them respectively prosecuted for any forfeiture thereof, and for the use of such society to which such officer or officers shall belong; and no bond or other security to be given to or on account of any such society, or in pursuance of this act, shall be charged or chargeable with any stamp-duty whatever.

V. And be it farther enacted, That every such society shall and may, from time to time, elect and appoint any number of the members of such society, not less than eleven, to be a committee, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who being so delegated shall continue to act as such committee for and during such time as they shall be appointed; and in all cases where a standing committee shall be appointed for such society, for general purposes, the powers of such committee shall be first declared in and by the rules,



orders and regulations of such society, confirmed by the justices of the peace at their sessions, and filed in the manner herein before directed ; and in all cases where a committee shall be appointed for any particular purpose or purposes, the powers delegated to such committee shall be reduced into writing, and entered into a book by the secretary or clerk of such society, and five of the members of such committee, at least, shall at all times be necessary to concur in any act of such committee, and such committee shall, in all things delegated to them, act for and in the name of such society ; and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this act : Provided always, That the transactions of such committee shall be from time to time, and at all times, subject and liable to the review, allowance or disallowance, and control of such society, in such manner and form as such society shall, by their general rules, orders and regulations, confirmed by the justices and filed as aforesaid, have directed and appointed, or shall direct and appoint.

VI. And be it further enacted, That it shall and may be lawful to and for the treasurer or treasurers, trustee or trustees, for the time being of any such society, and he and they are hereby authorised and required from time to time, by and with the consent of such society, to be had and testified in such manner as shall be directed by the general rules and orders of such society, to lay out or dispose of such part of all such sums of money as shall at any time be collected, given or paid to, and for the beneficial ends, intents and purposes of such society as the exigencies of such society shall not call for the immediate application or expenditure of, either on private securities, to be approved of as aforesaid, (such securities to be taken in the name or names of such treasurer or treasurers, trustee or trustees, for the time be-

ing,) or to invest the same in the public stocks or funds, in the proper name or names of such treasurer or treasurers, trustee or trustees; and from time to time, with such consent as aforesaid, to alter and transfer such securities and funds, and to make sale thereof respectively.

VII. And be it further enacted, That all the dividends, interest and proceeds which shall from time to time arise from the monies so laid out or invested as aforesaid, shall, from time to time, be brought to account by such treasurer or treasurers, trustee or trustees, and shall be applied to and for the use of such society according to the rules, orders and regulations thereof.

VIII. Provided always, and be it further enacted, That the treasurer or treasurers, trustee or trustees, for the time being, and all other officers of any such society, who shall have or receive any part of the monies, effects or funds of such society, or shall in any manner have been or shall be entrusted with the disposition, management or custody thereof, or of any securities relating to the same, his, her and their executors, administrators and assigns respectively, shall, upon demand made in pursuance of any order by such society or committee to be appointed as aforesaid for that purpose, give in his or their account or accounts, at a general meeting of any such society, or to such committee thereof as aforesaid, to be examined, and allowed or disallowed, and shall on the like demand pay over all the monies remaining in his or their hands, and assign and transfer or deliver all securities, effects, or funds taken or standing in his or their name or names as aforesaid, or being in his or their hands or custody, to the treasurer or treasurers, or trustee or trustees for the time being, or to such person or persons as such society shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer or deliver such securities or funds in manner aforesaid, it shall and may be lawful to and for every such

society, in the name of the treasurer or treasurers, trustee or trustees thereof, as the case may be, to exhibit a petition in the High Court of Chancery, or the Court of Exchequer in England, or the Court of Session in Scotland, or the Courts of Great Sessions in Wales respectively, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such court in their discretion shall seem just; and all assignments and transfers made in pursuance of such order shall be good and effectual in law, to all intents and purposes whatsoever.

IX. And be it further enacted, &c. That no fee, reward, emolument, or gratuity whatsoever, shall be demanded, taken, or received by an officer or minister of such court, for any matter or thing done in such court in pursuance of this act; and that upon the presenting of any such petition, it shall be lawful for the Lord High Chancellor, the Master of the Rolls and Barons of the Exchequer, respectively, in England, or the Lords of Session in Scotland, or the judges of any of the Courts of Great Sessions in Wales, to assign counsel learned in the law, and to appoint a clerk of such court to advise and carry on such petition on behalf of such society, who are hereby respectively required to do their duties therein, without fee or reward, and that no such proceedings in such court, in pursuance of this act, shall be chargeable with any stamp-duty.

X. And be it further enacted, &c. That if any person appointed to any office by any such society, and being intrusted with, or having in his hands or possession, any monies or effects belonging to such society, or any securities relating to the same, shall die, or become a bankrupt or insolvent, his executors or administrators, assignee or assignees, shall, within forty days after demand made by the order of any such society, or the major part of them assembled at any meeting thereof, deliver over all things belonging to such society, to such person or persons as such society shall appoint, and shall pay out of the assets or effects of such person all



sums of money remaining due, which such person received by virtue of his said office, before any of his other debts are paid or satisfied; and all such assets and effects shall be bound to the payment and discharge thereof accordingly.

XI. And be it further enacted, &c. That all monies, goods, chattels, stocks, annuities, and other transferable securities and effects whatever, belonging to such society, shall be vested in the treasurer or treasurers, trustee or trustees, for the time being, for the use and benefit of such society, and from and after the death or removal of any treasurer or treasurers, trustee or trustees, shall vest in the succeeding treasurer or treasurers, trustee or trustees, for the same estates and interests, as he or they then had therein, and subject to the same trust, without any assignment or transfer whatever; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed, and be taken to be, and shall, in every such proceeding, (where necessary,) be stated to be the property of the person or persons appointed to the office of treasurer or treasurers, trustee or trustees, (as the case may be,) of such society for the time being, in his, her, or their proper name or names; and such person or persons so appointed shall, and they are hereby respectively authorised, to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, touching or concerning such monies, goods, or chattels, or effects, of or belonging to such society; and such person or persons so appointed shall and may, in all cases concerning the property of such society, sue and be sued, plead and be impleaded, in his or their proper name or names, without other description; and no such suit, action, or prosecution shall be discontinued or abate by the death or removal of such person or persons from the said office of treasurer or treasurers, trustee or trustees aforesaid; but the same shall and may be proceeded in by the succeeding treasurer or treasurers, trustee or trustees, in the

proper name or names of the person or persons commencing the same ; any law, usage, or custom, to the contrary thereof notwithstanding.

XII. And be it further enacted, &c. That every such society so to be established as aforesaid, before any of the rules, orders, or regulations thereof, shall be confirmed by the justices, in the manner herein before directed, shall, in or by one or more of the general rules, orders, or regulations to be confirmed by such justices, declare all and every the intents and purposes for which such society is intended to be established ; and shall also, in and by such rules, orders, and regulations, direct all and every the uses and purposes to which the money, which shall, from time to time, be subscribed, paid, or given to, or for the use or benefit of such society, or which shall arise therefrom, or in anywise belonging to such society, shall be appropriated and applied, and in what shares and proportions, and under what circumstance any member of such society, or other person, shall or may become entitled to the same, or any part thereof, and which application shall not in anywise be repugnant to the uses, intents, and purposes of such society, or any of them, so to be declared as aforesaid ; and all such rules, orders, or regulations, during the continuance of the same, shall be complied with and enforced ; and the monies so subscribed, paid, or given, or so arising to or for the use or benefit of such society, or belonging thereto, shall not be diverted or misapplied, either by the treasurer or treasurers, trustee or trustees, or any other officer or officers of such society entrusted therewith, under such penalty or forfeiture, as such society shall, by any general rule, order, or regulation, impose and inflict for such offence ; and that it shall not be lawful for any such society, by any rule, order or regulation, at any general meeting, or otherwise, to dissolve, or determine such society, so long as the intents or purposes declared by such society, or any of them, remain to be carried into effect, without the consent and approbation of five-sixths

of the then existing members of such society, and also of all persons then receiving, or then entitled to receive relief from such society, either on account of sickness, age, or infirmity, to be testified under their hands individually and respectively ; nor shall it be lawful for such society, by any rule, order, or regulation, to direct the division or distribution of such stock or fund, or any part thereof, to or amongst the several members of such society, other than for carrying into effect the general intents and purposes of such society declared by them, and confirmed by the justices of the peace as aforesaid, according to the directions of this act ; but that all such rules, orders, and regulations for the dissolution or determination of any such society, without such consent as aforesaid, or for the distribution or division of the stock or fund of such society, contrary to the rules, orders, and regulations which shall have been confirmed by the said justices at their sessions, and filed in pursuance of this act, shall be void, and of none effect.

XIII. And be it further enacted, That all the rules, orders and regulations, from time to time made, ordained, and constituted by any such society, in the manner directed by this act, shall be forthwith entered in a book or books to be kept by one or more of the members of such society, to be appointed for that purpose, and shall be signed by the said members, and shall at all seasonable times be open for the inspection of any member of such society ; and such rules, orders and regulations, so entered and signed, shall be deemed original orders, and shall be received in evidence as such in all disputes and in all trials before any court in this kingdom ; and that no certiorari shall be brought or allowed to remove any of the rules, orders or regulations, of any such society, made in pursuance of this act, into any of his Majesty's courts of record at Westminster.

XIV. And be it further enacted, That it shall, and may be lawful for any such society to receive donations of any person or persons towards the supply of their stock or fund,

and all such sums shall be applicable to the general purposes of such society, in the like manner as the contributions of the several members of such society are or shall be directed to be applied in pursuance of this act, and shall not be applied in any other manner.

XV. And be it further enacted, That if any person having been admitted a member of any such society established by virtue of this act, shall think himself aggrieved by any act, matter, or thing, done or omitted to be done by any such society, or any person or persons acting under them, it shall and may be lawful for any two or more justices of the peace of the county, riding, division, or shire where, or near unto the place where such society shall be established, on complaint made upon oath or affirmation, by or on behalf of such person, (which oath or affirmation, such justices of the peace are hereby empowered and required to administer,) to issue their summons to the presidents, wardens, stewards, or other principal officers of such society, by whatever name such principal officers shall be respectively named or called, or one of them, in case such complaint shall be made against such society collectively; and in case such complaint shall be made against any person or persons appointed to such office or offices, then to summon such person or persons to appear before such justices at a convenient time and place, to be respectively named in such summons; and also to summon at the same time and place, if there shall be occasion, all such persons as shall appear to such justices to have the custody of the rules, orders and regulations of such society, and such justices, at the time and place named in such summons, whether the person or persons so summoned shall or shall not appear according to such summons, nevertheless, on proof upon oath or affirmation of such summons being duly served, or left at his, her, or their usual place or places of abode, shall proceed peremptorily to hear and determine, in a summary way, the matter of such complaint according to the true purport and meaning of the rules, orders and re-

gulations of such society, confirmed by the justices according to the directions of this act, and shall make such order therein as to them shall seem just ; and every such order of such justices shall be complied with, and shall be final to all intents and purposes, and shall not be subject to appeal, or to be removed or removeable into any of his Majesty's courts of record at Westminster.

XVI. Provided always, and be it further enacted, That if provision shall be made by one or more of the general rules or orders of any such society, and confirmed as required by this act, for a reference by arbitration of any matter in dispute between any such society, or any person or persons acting under them, and any individual members thereof, the matter so in dispute shall be referred to such arbitrators as shall be named and elected, in such manner as shall be prescribed by such general rules or orders ; and whatever award, order or determination, shall be made by the said arbitrators, or the major part of them, according to the true purport and meaning of the rules and orders of such society, confirmed by the justices according to the directions of this act, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without appeal, or being subject to the control of two or more justices of the peace in the manner herein-before prescribed.

The XVII. and following clauses of this act contain regulations as to the rights of members of such societies to obtain settlements in parishes in England, which do not concern Scotland.

XXVII. Declares this act to be a public act, and to be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without being specially pleaded.

The act 35. of Geo. III. *cap.* 111, recites the above statute 33. of Geo. III. *cap.* 54. and then proceeds thus :



“ I. And whereas many such societies may have inadvertently omitted to take the benefit of the said act,” be it enacted, &c. That it shall be lawful for any such society to exhibit the rules, orders and regulations made for its government at any general quarter sessions of the peace, or at any adjournment thereof, to be holden in and for the county, riding, division or shire where such society hath been established, at any time before, or immediately after, the Michaelmas session in 1796 : And that such rules, orders and regulations, being confirmed in the manner in the said recited act directed, may be filed at such sessions, and shall be valid and as effectual as if the same had been exhibited, confirmed and filed within the time in the said recited act limited.

“ II. And whereas several benevolent and charitable institutions and societies are formed in this kingdom for the purpose of relieving, by voluntary subscriptions and benefactions, widows, orphans, and families of the clergy and others in distressed circumstances : And whereas such institutions have or may have funds which they may wish to place out on public securities under the management of a treasurer : And whereas, in order to give stability to such institutions, it is necessary that their property should be secured under the authority of Parliament :” Be it therefore enacted, That it shall be lawful for the governors, directors, managers, or members of any institution for the purpose of relieving the widows, orphans, and families of the clergy and others in distressed circumstances, to frame good and wholesome rules for the management and distribution of their funds, and the same from time to time to amend and alter, or to make new rules as occasion shall require, and to procure the same to be presented to the justices of the peace for their confirmation within the time herein before limited, and to be registered under and subject to the same conditions, methods, restrictions and regulations, as the members of societies, to be established by virtue of the said recited

act, are directed to make, alter, amend, or renew and register, their rules.

III. And be it further enacted, That the governors, directors, managers, or members of any such institution, whose rules shall be confirmed and registered according to the directions of the said recited act, shall and may appoint a treasurer, who shall give such security as is directed by the said recited act; and that such treasurer, so appointed, shall be subject to account for the funds belonging to such institution, and the same shall be vested in such treasurer, and such treasurer shall sue and be sued in such manner as is directed by the said recited act: And that all powers, authorities, rules, methods, directions, regulations, provisions, conditions and restrictions, in the said act contained, so far as the same relate to the appointment of treasurers, or to the taking security from such treasurer, and for protecting, securing or recovering the funds vested in such treasurer, shall be extended to all and every the institutions established for the purposes herein before mentioned by virtue of this act, or any of them; and all such institutions shall have and enjoy, and be entitled unto the benefit of this act, with relation to the several matters before mentioned, as fully and effectually as any society established by virtue of the said recited act can, or may have or enjoy the same: And all the powers, &c. in the said act contained, in relation to the several matters before mentioned, shall be applied and put in execution with respect to the several institutions established by virtue of this act, as fully and effectually as if the same had been particularly repeated and re-enacted in this act.

The act 43. of Geo. III. *cap.* 111. for enabling friendly societies intended to be established under the above act 33. of Geo. III, to rectify mistakes made in the registry of their rules, recites the act 33. of Geo. III. *cap.* 54, and declares, that any society ha-

ving exhibited their regulations at any quarter sessions for a peculiar jurisdiction, may exhibit them to the quarter sessions for the county, with a certificate or affidavit of such first exhibition; and such regulations being confirmed shall then be valid from the beginning.

And the statute 49. of Geo. III. *cap.* 125, " to amend an act made in the 33d year of his present Majesty, for the encouragement and relief of friendly societies," declares,

That if any person having been admitted a member of any society established under the authority of the said act, shall offend against any of the rules, orders, or regulations, of such society, it shall be lawful for any two justices of the peace residing within the county, riding, division, shire, stewartry, city, liberty, or place within which such society shall be held, upon complaint made on oath by any member of such society, to issue their summons to such person against whom such complaint shall be made, and upon his or her appearance, or, in default thereof, upon due proof upon oath of the service of such summons, such justices shall proceed to hear and determine the said complaint according to the rules, orders, and regulations of the said society confirmed as directed by the said act, and shall make such order therein as to them shall seem just; and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not, on notice of such order, forthwith pay the sum of money so adjudged to the person or persons, and in the manner directed by this act, it shall be lawful for such justices, and they are hereby required by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, together with such costs as shall be awarded by the said justices, and also the costs and charges attending such

distress and sale, returning the overplus (if any) to the owner.

“ II. And whereas it was provided by the said act of the  
“ thirty-third year of the reign of his present Majesty, that  
“ no society to be established for the purposes therein re-  
“ cited should be deemed and taken to be within the mean-  
“ ing of the same act, unless the rules of the society should  
“ be filed at the quarter sessions of the peace, before the  
“ end of the year 1794, which time was enlarged by an act  
“ of the thirty-fifth year of his present Majesty’s reign to  
“ Michaelmas 1796 : And whereas it is expedient that  
“ all societies which were established under the authority  
“ of the first recited act, for the laudable purposes there-  
“ by intended, previously to the same having been passed,  
“ should be allowed to file their rules, notwithstanding their  
“ having omitted to do so within the times limited :” Be it  
therefore enacted, That all such societies, the rules, orders,  
and regulations of which shall have been exhibited to the  
justices of the peace since Michaelmas 1796, or which shall  
at any time hereafter be exhibited in the manner directed by  
the said recited act of the thirty-third year of his present  
Majesty, and which shall have been, or shall be dealt with,  
examined, approved of, and confirmed by the justices in the  
manner therein directed, and have been or shall be deposi-  
ted with the clerk of the peace, and filed as directed also  
by the said act, shall be deemed and taken to be within the  
intent and meaning of the said act, as amply and for all pur-  
poses as if their rules had been established within the pe-  
riod limited in either of the recited acts.

III. And be it further enacted, That if complaint shall  
be made to two such justices of the peace by any member of  
such societies, of relief having been refused to him by any  
such society, to which he shall be lawfully entitled accord-  
ing to the rules of the society to which he shall belong, it  
shall be lawful for the said two justices of the peace residing

within the county, riding, division, shire, stewartry, city, liberty, or place, within which such society shall be held, and such justices are hereby required, upon complaint made by or on the behalf of the person aggrieved thereby, to summon the person, being an officer of the society against whom such complaint shall be made, and upon his or her appearance, or in default thereof, upon due proof upon oath of the service of such summons, such justices shall proceed to hear and determine the said complaint, and award such sum of money to be forthwith paid to the said complainant, as shall appear to such justices to be due on such award as aforesaid, together with such a sum for costs, not exceeding the sum of ten shillings, as to such justices shall seem meet; and if the said sums so to be awarded, together with such costs, shall not be forthwith and in the presence of such justice or justices paid to such complainant, or to some person or persons there attending on the behalf of such complainant, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress, or by distress and sale of the monies, goods, chattels, securities, and effects belonging to the said society, together with all further costs and charges attending such distress, or such distress and sale, returning the overplus (if any) to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found, then to be levied by distress and sale of the proper goods of the officer or officers of the said society so neglecting or refusing as aforesaid, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner, and so from time to time as often as complaint shall be made of the non-payment of any sum or sums directed by such order to be paid as aforesaid, such justices shall by like warrant cause such arrears from time to time be levied in the manner before directed: Provided, always, That whatever sums shall be paid by any such officer or officers, or levied on his or their pro-

per goods in pursuance of the order of any justice as aforesaid, shall be repaid, with all damages accruing to him or them, by and out of the monies belonging to such society, or out of the first monies which shall thereafter be received by such society.

IV. And be it further enacted, That all orders made by justices of the peace by virtue of the said recited act, or this act, upon the complaint of any person having been admitted a member of any society established under the said act, who shall be aggrieved by any act, matter, or thing done or omitted to be done by any such society, shall be made upon the presidents, wardens, stewards, treasurers, trustees, or other principal officers of the society to which such complaint shall relate, or any one or more of them, or any of them, at the discretion of the said justices, in the proper name or names of such officer or officers; and every such order may be served upon the officer or officers so named therein, either by delivering a copy of the said order to such officer or officers, or one of them, or leaving the same at his last or usual place of abode; and such service shall be binding on such officer or officers, and on the society to which such officer or officers shall belong, to do and perform, or cause to be done or performed, all and every the matters and things contained in and directed by such order to be done, according to the true intent and meaning thereof.

V. And be it further enacted, That every order, adjudication, or award of any justice or justices under this act, shall be final and conclusive to all intents and purposes, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity.

Bell, II. 159.

#### DECISIONS.

*Bremner v. Huntly Friendly Society*, 4. Dec. 1817.—*Milner*, 10. Feb. 1825, S. & D. III. 518.

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FORGERY. See BANK-NOTES and BILLS OF EXCHANGE.

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FREEHOLD QUALIFICATION. See PARLIAMENT.

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### GAME.

All lawyers agree, that the right of killing game is enjoyed by every class of men equally. The limitations and restraints that have at different times been introduced do not call this right in question. They were imposed for the protection of property, and to prevent the total destruction of the breed of game.

The extreme rigour of the penalties in the old statutes seems to bear no proportion to the offence. Probably it was found necessary to check the excessive indulgence of a pastime which enticed the industrious to idleness, and which might, in some states of society, prove dangerous. At the present day, it is not necessary to do more than mention their dates. Statute 1427, *cap.* 109, "wilde fowles forbidden to be taken."—1457, *cap.* 84, "against destroying the nests of partridges and plovers."—1457, *cap.* 88, "against destroying hares."—1474, *cap.* 60, specifies "the unlawful of stealing of haulkes, houndes, pertrickes and ducks."—1474, *cap.* 61, "of daes and raes, hunting

" of deares, and taking of cunniges."—1508, *cap.* 69, " anent stealers of pikes, breakers of yards and dou-  
 " cats."—1535, *cap.* 13, " against breakers of dou-  
 " cats."—1535, *cap.* 14, " against slaying hares."—  
 1551, *cap.* 9, " anent shooting with guns at deer and  
 " wild fowl."—1555, *cap.* 51, " anent slaying of wild  
 " beasts," &c.—1555, *cap.* 58, " anent stealing of  
 " hawks, hounds," &c.—1567, *cap.* 16, " anent slay-  
 " ing of hart, hynde," &c.—1581, *cap.* 123, " against  
 " shooting wild beasts and fowls."—1587, *cap.* 59,  
 " slayers of wilde beasts committes theft."—1594, *cap.*  
 210, " anent haning of the Kingis parkes and forrestes,  
 " and encrease of wild fowl and vennison."—1597, *cap.*  
 266, " it is not leasum to slay deare, raes, hares, wilde  
 " fowls or dowses." The only statutes of an old date  
 that still continue in force, are those of 1427, *cap.* 104,  
 and 1457, *cap.* 87, as to killing of wolves.—See Col-  
 quhoun *v.* Buchanan, 6. Aug. 1785.

The present game laws of Scotland depend on the  
 following statutes :

The act 1707, *cap.* 13, is as follows :

Our Sovereign Lady, with advice and consent of Parlia-  
 ment, does hereby strictly prohibit and discharge, in all time  
 coming, the killing of muirfowls, from the first of March to  
 the twenty of June, and partridges from the first of March  
 to the twenty of August inclusive, under the penalty of twenty  
 pounds Scots *toties quoties*, the half whereof to be given to  
 the discoverer, and the other half to be at the disposal of the  
 judge before whom the same shall be cognosced : And for  
 the better preventing the killing of these fowls during the  
 foresaid prohibited seasons, her Majesty, with advice foresaid,



does strictly prohibit and discharge the selling, buying, or using of these fowls during the foresaid seasons within any burgh, village or private house within this kingdom, under the penalty foresaid, to be applied as above: As also, it is hereby discharged, That no common fowlers shall presume to hunt on any grounds without a subscribed warrant from the proprietors of the said grounds, under the penalty foresaid, besides forfeiting their dogs, guns and nets, to the apprehenders or discoverers: And it is hereby further provided, That no fowler, or any other person whatsoever, shall come within any heritor's ground, without leave asked and given by the heritor, with setting dogs and nets, for killing fowls by nets; and if any common fowler shall be found in any place with guns or nets, having no licence from any nobleman or heritor, they shall be sent abroad as recruits; as also, that no persons whatsoever shall shoot hares, under the foresaid penalty: And for the better executing of this law, her Majesty, with advice foresaid, appoints and ordains all sheriffs of shires, stewarts of stewartries, justices of peace, masters of the game, bailies of burghs or regalities, to put the same in due execution, under the penalty of one hundred pounds Scots; for which penalty, it is hereby declared, That the said judges shall be liable to the pursuer or complainer before the Lords of Session, upon an instrument taken by the said pursuer or complainer, that the judge applied to refused or delayed to cognosce the complaint according to law, and to decern in the terms of this act: And, lastly, her Majesty, with consent foresaid, does hereby ratify and approve all former acts made anent the game, except in so far as they are hereby innovate and altered by this present act.

That part of the above statute which prohibits the shooting of hares under a penalty has been repealed by 48. of Geo. III. *cap.* 94.

*Legal Qualification.*

On this point, the original statute, 1600, *cap.* 23, is completely obsolete. But the statute 1621, *cap.* 31, "anent hunting and haulking," declares, "That no man hunt nor haulk, at any time hereafter, who hath not a plough of land in heritage, under the paine of ane hundredth pounds. Ordains his Majesty to have the one halfe of the penaltie of the contraveeners of this present act, and the dilator to have the other halfe of the said penaltie." This act was ratified by the subsequent act 1685, *cap.* 20. But this latter statute was merely temporary, and has never been in observance since the Union ; so that the qualification depends on the act 1621 above recited.

*Limitation as to the Season.*

The statute 13. of Geo. III. *cap.* 54, "for the more effectual preservation of the game in Scotland, and for repealing and amending several of the laws now in being relative thereto," declares,

That every person who shall wilfully take, kill, destroy, carry, sell, buy, or have in his or her possession or use any muirfowl or tarmagan between the tenth day of December and the twelfth day of August in any year ; or any heathfowl between the tenth day of December and the twentieth day of August in any year ; or any partridge between the first day of February and the first day of September in any year ; or any pheasant between the first day of February and the first day of October in any year ; shall, for every bird so taken, killed, destroyed, carried, sold, bought, found or used, forfeit and pay the sum of five pounds sterling ; and in case of not paying the sum decreed within the space of ten days after cou-

viction after such sentence, shall suffer imprisonment for two months for each five pounds sterling thereof.

II. Provided always, That nothing in this act shall extend to any pheasant or partridge which shall be taken at the seasons allowed by this act, and kept in any mew or breeding place.

III. And be it further enacted, &c. That every person whatever not qualified to kill game in Scotland, who shall have in his or her custody, or carry, at any time of the year, upon any pretence whatsoever, any hares, partridges, pheasants, muirfowl, tarmagans, heathfowl, snipes or quails, without the leave or order of a person qualified to kill game in Scotland, for carrying such hares or other game, or for having the same in his or her custody, shall, for the first offence, forfeit and pay the sum of twenty shillings sterling, and for the second and every other subsequent offence the sum of forty shillings sterling : And in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first offence, and for three months for the second and every other subsequent offence.

IV. And be it enacted, &c. That every person who shall make muirburn, or set fire to any heath or muir in Scotland, from the eleventh day of April to the first day of November in any year, shall forfeit and pay the sum of forty shillings sterling for the first offence, five pounds sterling for the second offence, and ten pounds sterling for the third and every other subsequent offence : And in case of not paying the sum decreed within the space of ten days after conviction by a final judgment, shall suffer imprisonment for six weeks for the first offence, two months for the second, and three months for the third and every other subsequent offence.

V. And be it enacted, &c. That the tenant, possessor or occupier of the ground upon which such muirburn shall be

made or discovered within the forbidden time aforesaid, shall be deemed and taken to be guilty of the offence, and shall be liable to the several penalties aforesaid, unless such tenant, possessor or occupier, shall prove, to the satisfaction of the court before which he or she shall be prosecuted, that such fire was communicated from some neighbouring ground, or was raised upon his own ground by some other person not in his or her service or family.

VI. Provided always, and be it enacted, &c. That every proprietor of high and wet muir lands, the heath upon which frequently cannot be burnt so early as the eleventh day of April, may, when such lands are in his own occupation, burn the heath upon the same at any time between the eleventh and twenty-fifth day of April in any year, without incurring any of the penalties before mentioned; and when such lands are let, the proprietor, or his commissioner or factor, may, by a writing under his or her hands, authorise his tenant or tenants in such lands to burn the heath therein at any time between the eleventh and twenty-fifth day of April in any year without incurring any penalties before mentioned.

VII. Provided also, That the writing authorising such burning, when the lands are in the occupation of a tenant, shall, previous to such burning, be recorded in the sheriff or stewart court books of the county or stewartry within which the lands are, and which the sheriff or stewart clerk of such county or stewartry is hereby ordered and directed to do, upon receiving payment of the fees usually paid for recording writings.

VIII. And be it further enacted, &c. That all offences against this act shall and may be inquired into and determined, either by the oath or oaths of one or more credible witness or witnesses, or by the confession or oaths of the parties accused, before any two or more of his Majesty's justices of the peace, or before the sheriff or stewart depute or substitute of the county where the offence shall be committed, or

where the offender shall be found ; and that all prosecutions for offences against this act shall be carried on, either at the instance of the fiscal of the court in which the prosecution is brought, or of any other person who will inform or complain.

IX. And be it further enacted, &c. That if any person convicted of any of the offences against this act shall not pay the penalty or forfeiture decreed against him or her, within the space of ten days from and after a final judgment of conviction, it shall and may be lawful for the justices of the peace, sheriff, or sheriff depute or substitute, before whom the information, complaint, or action may have been brought, upon the application of the prosecutor, to grant warrant for levying the penalties or forfeitures, by immediate distress and sale of the offender's goods and moveables, together with the costs and charges attending the levying thereof, returning the overplus, if any be, to the owner ; or to grant warrant for committing the offender to the common gaol of the county, for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or until payment ; and in case a warrant for levying the penalty by distress and sale of the offender's goods and moveables shall be first applied for and obtained, and that the penalty or forfeiture shall not be recovered in consequence thereof, it shall and may be lawful for the justices of peace, sheriff or steward depute, or substitute who granted the warrant for levying the penalty or forfeiture by distress and sale of the offender's goods and moveables, upon its being certified to him or them, by the officer employed in executing the warrant, either that he has been able to recover no part of the penalty or forfeiture, or that a certain part, to be certified by him, still remains unrecovered, to grant warrant for committing the offender to the common gaol of the county for the time specified in this act, as satisfaction for the penalty or forfeiture incurred, or

until complete payment shall be made of the penalty or forfeiture incurred and decreed.

X. And be it further enacted, &c. That one moiety of the penalties or forfeitures to be incurred for any offence against this act, shall, when recovered, be paid to the prosecutor, and the other moiety shall be applied to the use of the poor of the parish, or to the repairing of the high roads within the parish where the offence shall be committed, as the justices of the peace, or the sheriff, or steward depute or substitute shall direct, before whom the offenders shall be convicted.

XI. Provided always, and be it enacted, That it shall and may be lawful to or for any person conceiving himself or herself aggrieved by any decree of the justices of the peace, or sheriff or steward depute or substitute, in such prosecutions, to complain and seek relief by appeal to the next Circuit Court of Justiciary of the circuit wherein the county is where the decree is pronounced; or where there are no circuit courts, to the Court of Justiciary at Edinburgh, by taking and entering an appeal in open court at the time of pronouncing such decree, or at any time thereafter within ten days, by lodging the same in the hands of the clerk of the court, and serving the adverse party with a duplicate thereof personally, or at his dwelling-house, or his procurator or agent in the cause; and such service shall be sufficient summons to oblige the prosecutor to attend and answer at the next circuit court which shall happen to be held, at least fifteen days after service, or at the first Court of Justiciary which shall be held at Edinburgh in the case where there are no circuit courts, at least fifteen days after such service; and thereupon the judge or judges at such circuit court, or in the Court of Justiciary at Edinburgh, shall and may proceed to cognosce, hear and determine: And in case they shall find the reasons of any such appeal not relevant, or not instructed, or shall determine against the party appealing,

the judge or judges shall condemn the appellant in such costs of suit as shall appear to be just and reasonable, and the decree so pronounced shall be final and conclusive to the parties.

XII. Provided always, and be it enacted, &c. That when an appeal is taken, the appellant at the time of moving his or her appeal shall lodge with the clerk of the court from which an appeal is taken, a bond, with a sufficient cautioner, for paying the sum or sums contained in the decree appealed against, so far as affirmed and approved of by the judgment upon the appeal, and for paying the costs of suit, if any shall be awarded; and the clerk of court shall be answerable for the sufficiency of such cautioner.

XIII. Provided likewise, and be it enacted by the authority foresaid, That in case any circuit court shall, on hearing any such appeal, find any difficulty to arise, that by means thereof such circuit court cannot proceed to the determination thereof, consistently with justice and the nature of the case; in any such case, and not otherwise, it shall and may be lawful to and for such circuit court to certify such appeal, together with the reasons of such difficulty, and the proceedings thereupon had before such circuit court, to the Court of Justiciary at Edinburgh, which is hereby authorised and required to proceed in and determine the same.

XIV. Provided always, That no forfeiture or penalty in this act shall be recovered, unless the prosecution for recovering thereof shall be commenced within six months after the offence committed.

XV. Provided also, That no person shall be liable to any of the penalties or forfeitures hereby enacted except for such offence as shall be committed before 24th day of June 1773.

XVI. And be it further enacted, That from and after the passing of this act, an act passed in the 24th year of his late Majesty King George the Second, intituled, An act for the better preservation of the game in Scotland, and an act

passed the third year of his present Majesty, intituled, An act for the better preservation of the game in Scotland, and for repealing part of an act passed in the 24th year of his late Majesty, for the better preservation of the game in Scotland; and so much of an act passed in the sixth year of his present Majesty, intituled, An act to extend an act made in the 4th year of the reign of King George the First, intituled, An act for the further preventing robbery, burglary, and other felonies; and for the more effectual transportation of felons, and unlawful exporters of wool, and for declaring the law upon some points relative to pirates to Scotland, so far as the act relates to the more effectual transportation of felons, and for amending and rendering more effectual the laws for restraining muirburn in forbidden time, in that part of the united kingdom as limits the time for making muirburn, shall be and are hereby repealed.

By the act 36. of Geo. III. *cap.* 54, the forbidden time for killing partridges was declared to be between 1. February and 14. September. But by 39. Geo. III. *cap.* 54, the prohibited time is again declared to be from 1. February to 1. September.

#### *Muirburn.*

The original statutes on this subject were 1424, *cap.* 20, and 1535, *cap.* 11. But they are superseded by 13. Geo. III. *cap.* 54, above quoted.

#### *Destruction of Game by night.*

For preventing persons going armed by night for the above purpose, the act 57. Geo. III. *cap.* 90, declares as follows :

“ I. Whereas idle and disorderly persons frequently go



“ armed in the night time for the purpose of protecting themselves, and aiding, and abetting, and assisting each other in the illegal destruction of game or rabbits : And whereas such practices are found by experience to lead to the commission of felonies and murders :” For the more effectual suppression thereof, be it enacted, &c. That if any person or persons, having entered into any forest, chase, park, wood, plantation, close or other open or inclosed ground, with the intent illegally to destroy, take or kill game or rabbits, or with the intent to aid, abet and assist any person or persons illegally to destroy, take or kill game or rabbits, shall be found at night, that is to say, between the hours of six in the evening and seven in the morning, from the 1st day of October to the 1st day of February, between seven in the evening and five in the morning from the 1st day of February till the 1st day of April, and between nine in the evening and four in the morning for the remainder of the year, armed with any gun, crossbow, fire-arms, bludgeon or any other offensive weapon, every such person so offending, being thereof lawfully convicted, shall be adjudged guilty of a misdemeanour, and shall be sentenced to transportation for seven years, or shall receive such other punishment as may by law be inflicted on persons guilty of misdemeanour, and as the court before which such offenders may be tried and convicted shall adjudge ; and if any such offender or offenders shall return into Great Britain before the expiration of the term for which he or they shall be so transported, contrary to the intent and meaning hereof, he or they so returning and being thereof duly convicted, shall be adjudged guilty of felony, and shall be sentenced to transportation for the term or terms of his or their natural life or lives.

II. And for the more easy and speedy bringing the offenders against this act to justice, be it further enacted, That it shall and may be lawful to and for the ranger and rangers, and to and for the owner and owners, occupier and oc-

cupiers of any such forest, chase, park, wood, plantation, close or other open or inclosed ground, and also for his, her, or their keeper and keepers, servant and servants, and also for any other person and persons, to seize and apprehend, or to assist in seizing and apprehending such offender or offenders, by virtue of this act, and by the authority of the same to convey and deliver such offender or offenders into the custody of a peace officer, who is hereby authorised and directed to convey such offender or offenders before some of his Majesty's justices of the peace for the county or place where such offence shall be alleged to have been committed; or in case such offender or offenders shall not be so apprehended, then it shall and may be lawful for any such justice, on information before him on the oath of any credible witness or witnesses, to issue his warrant for the apprehension of such offender or offenders; and if upon the apprehension of any such offender or offenders, it shall appear to such justice, on the oath of any credible witness or witnesses, that the person or persons so charged hath or have been guilty of the crime of being found armed at night as aforesaid, it shall and may be lawful for such justice to admit such person or persons so charged to bail, and in default of bail, to commit such person or persons to the county gaol, until the next quarter sessions of the peace, or the next general commission of gaol delivery, to be holden for the same county or place, there to be tried and dealt with as by this act is directed; and if in Scotland, until such person or persons so charged shall be dealt with, as any person or persons charged with a transportable offence may be dealt with according to the law and practice of Scotland.

III. And be it further enacted, That if any person or persons shall, after the passing of this act, unlawfully enter into, or be found in any forest, chase, park, wood, plantation, close, or other open or inclosed ground at night, according to the provisions of this act, with respect to what shall be

deemed night, for the purposes hereof, having any net, engine, or other instrument for the purpose, and with the intent to destroy, take, or kill, or shall wilfully destroy, take, or kill game, it shall and may be lawful to and for the ranger and rangers, and to and for the owner and owners, occupier and occupiers of any such forest, chase, park, wood, plantation, close, or other open or inclosed ground, and also for his, her, or their keeper and keepers, servant and servants, and also for any other person or persons, to seize and apprehend, or to assist in seizing and apprehending such offender or offenders by virtue of this act, and by the authority of the same to convey and deliver such offender or offenders into the custody of a peace officer, who is hereby authorised and directed to convey such offender or offenders before some one of his Majesty's justices of the peace, for the county or place where such offence shall be alleged to have been committed, to be dealt with according to law.

IV. And be it further enacted, That an act made in the last session of Parliament, intituled, An act to repeal an act made in the thirty-ninth and fortieth years of his present Majesty's reign, intituled, "An act to extend the provisions of "an act made in the seventeenth year of the reign of King "George the Second, intituled, An act to amend and make "more effectual the laws relating to rogues, vagabonds, and "other idle and disorderly persons, and to houses of correction," and to make other provisions in lieu thereof, shall be, and the same is hereby repealed.

V. And be it further enacted, That the said act made in the thirty-ninth and fortieth years of his present Majesty, intituled, An act to extend the provisions of an act made in the seventeenth year of the reign of King George the Second, intituled, "An act to amend and make more effectual the "laws relating to rogues, vagabonds, and other idle and "disorderly persons, and to houses of correction," shall be, and the same is hereby repealed.

*Game Certificates.*

The first statute requiring a duty to be paid to Government for a licence to kill game was 24. of Geo. III. *cap.* 43. This duty was raised to three guineas by 31. of Geo. III. *cap.* 21, and afterwards to L.3, 13s. 6d., by 52. Geo. III. *cap.* 93. Those persons who have no game certificate may give assistance to those who have paid the duty ; but it must be strictly an aid to a person possessing a licence ; 54. Geo. III. *cap.* 141.

Craig, II. 8. 13.—Bankton, II. 17.—Ersk. II. 6. 6.—Stair, II. 3. 76.—Ness on the Game Laws.—Tait's Justice of Peace, p. 172.—Hutchison's Justice of Peace, II. 549.

DECISIONS.

Kelly *v.* Smith, 27. June 1780, Mor. 4995.—Trotter *v.* McEwan, 8. July 1809.—Marquis of Tweeddale *v.* Somner, 18. June 1808.—Earl of Hopetoun *v.* Wright, 17. Jan. 1810.—Procurator-Fiscal of Edinburgh *v.* Wilson, 27. June 1787.—Forbes *v.* Anderson, 1. Feb. 1809.—Earl of Aboyne *v.* Farquharson, 5. Dec. 1809.—Earl Mansfield *v.* Hendersons, 18. Jan. 1810.—Campbell *v.* Stewart, 24. Jan. 1809.—Marquis of Tweeddale *v.* Dalrymple, 3. March 1778, Mor. 4992.—Watson *v.* Members of the Edinburgh Hunt, 9. Aug. 1763, 4991.—Earl of Breadalbane *v.* Livingston, 16. June 1790, affirmed on appeal, 13. April 1791.—Ronaldson *v.* Ballantyne, 21. Nov. 1804, Mor. 15270.—Gregory *v.* Wemyss, 23. Jan. 1753.—Earl of Cassillis, 8. Feb. 1826, Shaw's Justiciary Cases, No. 146.—Baird, 19. Jan. 1825, S. & D. III. 448.—Earl of Aboyne, 22. June 1813, F. C.—Gray, 23. Jan.

1816.—Maxwell, 5. June 1820, F. C.—Robertson, 22. May 1810, affirmed 1. Dec. 1814.

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GLEBE.

The legal provision for the ministers of the Church of Scotland consists of stipend and a glebe. The amount and mode of allocation of stipend have already been explained in the title "Commission of Teinds. With regard to glebe, the object of the various statutes is to secure a sufficient extent of glebe, in the most convenient situation. The heritors of each parish are legally bound to contribute to this glebe, in proportion to the extent of their property in the parish, regard being paid to the prior liability of church lands.

The act 1563, *cap.* 72, declares,

That na parson, vicar, nor uther ecclesiastical parson, set in few, or lang tackes, onie of their manses or gleibes, pertaining to the saidis kirkes, without special license and consent of the Queenis grace in writ: And alswa it is statute and ordained, That they that ar appoynted or to be appoynted to serve and minister at ony kirk in this realm have the principal manse of the parson or vicar, or sa meikle thereof, as sall be fundin sufficient for staking of them; to the effect that they may the better await upon the charge appoynted, and to be appoynted unto them, quibidder the saidis gleibes be set in few or tack of before or not; or that ane reasonable and sufficient house be bigged to them beside the kirk, be the parson or vicar, or uthers haveand the saidis manses in few or lang tackes; and this to be done betuixt and the first day of November nixt to cum; and further, sa meikle

land to be annexed to the saidis dwelling-places of them that servis and ministeris at the kirk, as sall be hereafter with gude advisement appoynted.

The act 1572, *cap.* 48, explains and ratifies a prior statute passed in 1560. The enacting clause " finds " and declares,"

That the manses, outhr pertaining to the parsone or vicar, maist ewest to the kirk, and maist commodious for dwelling, perteines, and sall perteine to the minister or reader, serving at the samin kirk, togither with four acres of land of glebe at least, lyand contigue, or maist ewest to the said manse, gif there be sa meikle, and failzeing thereof, sa meikle as there is ; to be marked, and speciallie designed be the archbishop, bishop, superintendent, or commissioner of the diocese or province, the time of their nixt visitation, be the advise of ony twa of the maist honest and godlie of the parochiners, quhilkes he sall require (not being possessours of the said manses or glebes themselves,) to joyne with him in execution hereof, whither the saidis manses and glebes be set in few, or takkes of befoire, or not ; and upon the said marking and designation, the archbishop, bishop, superintendent, or commissioner, sall give his testimoniall, bearing, how he, with advise of sik twa of the parochiners, hes visited the manse and glebe of sik an kirk, and findes the samin occupied be sik persones ; and that they have appointed, marked, and designed the said manse, with four acres, or sik quantitie of land adjacent thereto, to the use of the minister or reader that sall serve and minister at the said kirk in time cumming ; and upon the minister's or reader's supplication, quhairwithall the said testimoniall sall be presented to the lordes of councell, letters sall be directed, charging the occupyars and possessours of the saidis manses and acres of land, whither the samin be set in few or takkes of before, or

not, to remove, desist, and cease theirfra, and enter the said minister or reader to the possession of the samin, within ten days, under the paine of rebellion; and gif they failzie, to put them to the horne; and in case they be denounced, letters of caption, and uthers executorialles to be direct upon them, according to the lawes of this realme. Quhilkes manses and acres of land sa marked, and designed as said is, it sall not be leasum to the ministers or readers, present or to cum, to sell, annalie, set in few, or takkes, or to put ony in possession of the samin, in prejudice of their successours; bot the samin to remaine alwayes free to the use and easement of sik as sall be admitted to serve and minister at the said kirk: And quhair ony persones, upon pretence of fewes or takkes, obtained of manses or glebes, hes maid sumptuous biggings thereon, fra the quhilks they think heavy to be dispossessed or removed, that then the archbichop, bischop, superintendent, or commissioner, the time of their visitation, travell to agree the fewer or takkesman, and the minister or reader, be delivering to the samin minister or reader of ane uther manse, quhilk sall be als gude, and ewest as the uther, be just estimation the time that it was set in few, or takkes; to be bigged betuixt this and the first daye of October nixt to cum; togidder alswa with certaine acres of land adjacent thereto, in manner foresaid, for eschewing of debait and contention: bot gif the fewer or takkesman refusis willingly to condiscend to the samin, then the execution to proceed, for removing fra the principall manse, and sa manie acres of land as is before specified, notwithstanding ony bigginges made, or to be made thereupon: Providing alwayes, that sa meikle of the few maill be deduced to the person or persones to quhom the saidis manses or glebes is set in few, *secundum ratam*; and siklike, that the fewer have sufficient action against the settar of the said manse and glebe, for sameikle entres silver as he payed to the settar the time of the setting thereof, *secundum ratam*, as said is.

The act 1578, *cap.* 62, declares,

That the saidis ministers and readers aucht and suld pay na teind for their saidis glebes and kirk-landes, extending to four aikers of land, designed to them, conforme to the said act ; bot decernis and declaris them to be free of their saidis teindes, and dischargeth them *simpliciter* thereof in all time cumming.

The act 1581, *cap.* 100, is as follows :

Because for laik of preaching and teaching in sindrie parts of the realme, monie people ar suspected to be fallen in great ignorance and danger of godles atheisme, it being found maist difficil, that in the charge of pluralitie of kirkes ony ane minister may instruct monie flockes: Theirfoir it is thoçt expedient, statute and ordained be our Sovereine Lord, and his three Estaites of this present Parliament, That every paroch kirk, and sameikil boundes as sall be found to be a sufficient and competent parochin theirfoir, sall have their awin pastour, with a sufficient and reasonabil stipend, according to the stait and habilitie of the place: And that all kirkis annexed to prelacies be provided of sufficient ministers with competent livinges, asweill laitlie disponsed sen his Hienes acceptation of the government in his awin persone, as that sall vaik and be provided hereafter, quhill his Hienes perfite age: And befoir the title of ony prelacie be conferred to ony person hereafter, that the saidis livinges and stipends be reserved in the provision, and alwayes compted in the thrid, to the effect that ministers may bee provided theirto *ad vitam*: And in case ony gift or provision of prelacie sall passe urtherwise, declairis the same to be null, and of nane avail, force, nor effect.

The act 1592, *cap.* 116, “ anent manses and glebes “ in cathedral and abbey kirks,” is as follows :



Our Sovereine Lord, with advise of the Estaites of this present Parliament, statutis and ordainis, That the acts of Parliament maid of before, anent manses and glebes to be given to ministers of God's halie evangell within this realme, sall be understand and extended to all abbayes and cathedrall kirkes within this realme, quhair na uther manse nor glebe, perteing to parson or vicar, was of before: swa that the ministers presentlie admitted, or quhilkis hereafter sall happen to be admitted, to the office or cure of the ministerie within the said kirk, sall have ane sufficient manse and dwelling place, within the precinct of the abbaie quhair he servis; togidder with four acres of land, of the best and maist commodious, lyand *contigue*, and maist ewest to the said manse, quhilk perteinis, or in onie time of before pertained, to the said abbaie, or onie member thereof, quhidder the samin land lye within the said precinct, or without the same, gif there be sa meikle as may extend to the quantitie of foure acres, to be designed, inhabit, occupied, laboured, manured, conforme to the tenour of the acte of Parliament, maid of before, anent manses and glebes, to be given to the ministers of God's word, within this realme: with speciall provision, that it sall be in the option of the abbotes, priores, and utheris prelates and persones quhat-sumever, fewares of the saidis cathedrall and abbaie places, ather to grant ane manse to the minister, within the precinct of their place, or else ane sufficient manse, lyand als ewest and commodious to the parochie kirk.

The act 1593, *cap.* 161, is as follows :

It is statute and ordained, quhair there hes bene na glebe of auld, or quhair hes bene sum of auld, zit it be farre within the quantitie of four aikers of land, that the designation be maid of the parson, vicar, abbot or prioress landes; and failzieing thereof, out of the bishoppis landes, friers landes, or ony uther kirk-landes, lyand within the boundes

of the said parochie, ay and quhill foure aikeris of land be compleit.

*Item*, That the saidis glebes be designed with freedome of foggage, pastourage, fewall, faill, diffat, loning, frie ischue and entrie, and all uthers priviledges and richtes, according to use and woont of auld.

The act 1593, *cap.* 162, is as follows :

Forsameikle as sindrie ministeres, quha hes bene in lang possession of their stipends, be vertew of their assignationes, are troubled be pensioners or tackismen, quha hes tane in tack, gift, or pension ather their haill stipends, or ane great pairt thereof, and hes obtained ratification in Parliament thereupon :

Therefore, our Sovereaine Lord, with advise of his Estaites of this present Parliament, ordainis that all ministeres stipends in time cumming be frie from all tackes, pensiones, taxationes, or impositiones quhatsumever, notwithstanding of onie gift or disposition maid in the contrair ; to the effect that the ministers may bruik their stipends peaceably in all time cumming, without ony trouble, according to their assignation.

The act 1593, *cap.* 163, “ anent dispositions of benefices granted to ministers,” is as follows :

Forsameikle as the ministers serving the cure within this realme, being lauchfullie provided to parsonages and vicarages, and annexed and pertaining of before to prelacies, hes bene this time bygane frustrat of the rentes and fruites of the same, notwithstanding the lauchfull provisiones and assignationes thereto : for remeid quhairof, and to the effect that the haill parsones, serving the cure of ministerie within this realme, may peaceablie bruik and possesse their benefices of parsonages and vicarages of their awin kirkes, fruites, rentes and emolumentes thereof, in all time cumming, conforme to

their provision and assignation of the samin, to remaine with them and their successoures, serving the cure, as said is, it is statute and ordained, That all gifts, provisiones, and assignationes, disposed to the ministers serving the cure of the parsonages, vicarages, and kirkes thereof, is and sall be, now, and in all time cumming, valiable and sufficient richtes and titles to them, and everie ane of them, for bruiking, joyssing and possessing of the same; and intrometting with the fruites, rentes, and dewties thereof, in time cumming, ratifiand and apprievand the same: notwithstanding quhatsumever act or constitution maid in the contrair: but prejudice allwaies of quhatsumever particular pairties rightes, and speciallie the Queenes Majesties kirkes of Dumfermelin.

The act 1593, *cap.* 165, is as follows :

Our Sovereine Lorde, with the advise of the Estaites of this present Parliament, havine consideration how that the ministers provided to ecclesiastical functiones and livings of the kirk, and serving the cure thereat, hes bene and may be in time cumming heavilie prejudged in their saidis ecclesiasticall livinges and rentes thereof, be speciall actes and constitutiones maid in favour of certaine particular persones: for remeid thereof in time cumming, hes statute and ordained, that quhatsumever acte or constitution of Parliament in time cumming, after the dait hereof, be maid in favour of ony particular person, quhairby the provision of ony ministers livings may be tane awaie, or in onie wise prejudged, directlie or indirectlie, in their saidis provisiones, rentes and profites thereof, or ony part of the samin; that the samin sall be in all times cumming null and of nane availe, force nor effect: except the saidis ministers be called upon their provisiones, and the samin, in haill or in part, reduced before the judge ordinar.

The act 1606, *cap.* 7, declares, That there shall be designed to the minister,

Foure sowmes grasse for ilk aiker of the saidis four e aiker of gleib land, extending in the haill to sextene sowmes, for the saidis four e aikers, and that of the maist commodious and best pasturage of ony kirk lands lyand next adjacent and maist nearest to the saidis kirks: And ordeins letters to be direct against the possessours thereof for removing therefra, in the samine forme as is appoynted by the foresaid act of Parliament, made anent designation of manses and gleibs of before.

The act 1617, *cap.* 6, for furnishing communion elements, declares,

That all the paroch kirks within this kingdom be provided of basins and lavoirs for the ministration of the sacrament of baptisme; and of cups, tables, and table-cloathes, for the ministration of the holy communion; which shall be received to that use by the minister of the parochin, in sik convenient place as he shall finde meet, for which he and his heires and executors shall be answerable to the parochin, in case the same be lost, or otherwayes used to any profane use. And ordeins the expenses thereof to be made by the parochiners, and the ministers of every kirk to do their diligence for providing the same, by causing the parochiners stent and taxe themselves to the effect foresaid, betwixt and the first of Februar next, under the pain of losing ane year's stipend. And for putting the said act in execution, ordeins the Lords of his Majesties Council and Session, to give forth their letters for charging the parochiners to convene and taxe themselves to the said effect, and make payment of the money wherein they shall be stented, as the same shall be required.

The act 1621, *cap.* 10, declares, “ that the ministers and readers ought and should pay no teind for  
 “ their soums (of) grass designed unto them in place  
 “ of their glebes, when no arable lands are adjacent to  
 “ kirks : and decerns and declares them to be free of  
 “ their teinds, and discharges them (*simpliciter*) of all  
 “ payment thereof in time coming.”

The act 1633, *cap.* 8, being a ratification of the act and commission anent ministers’ provisions, is as follows:

Our Sovereigne Lord, with the advice and consent of the Estates of Parliament, ratifies and approves the act of commission of surrenders and teinds, of the date at Holyrudhouse the twentie-sixth day of June, the yeare of God 1627 years, whereof the tenour follows: The commissioners, after reasoning upon the lowest proportion and provision, wherewith the ministrie serving the cure at each kirk shall be provided, have found it meet and expedient, that the lowest proportion shall be eight chalder of victual, where victual is payed, or proportionally in silver or victual, as the commissioners shall appoint at the settling of the kirke, and according to the estate of that part of the countrey, where the payment of the stipend shall occur; and thinke it meet, that the said proportion of eight chalder of victual, or proportionally in silver, as said is, shall be the lowest maintenance to each kirke, except such particular kirkes occurre, wherein there shall be a just, reasonable, and expedient cause to goe beneath the quantitie now determined.

And his Majestie and Estates foresaids referre to the commissioners to be chosen by his Majestie at this present Parliament, the consideration of the reasons and causes which may move them (after the valuation of the true worth of the teinds of ilke parish be closed,) to determine and modifie a lesse quantitie for the minister’s maintenance nor the quantitie foresaid of eight chalder of victual, or eight hundred

markes in victual or moneys proportionally ; and what the saids commissioners shall determine therein, the same to stand notwithstanding of this present ratification ; and also, his Majestie and Estates ratifie and approve the whole particular acts of the said commission of surrenders and teinds, whereby stipends are appointed and modified by the saids commissioners alreadie, and ordaine the ministers to whom the same is assigned to have intromission therewith ; and that the Lords of Session direct letters of horning and poynding in favour of the said ministers conforme thereto, upon one simple charge of ten dayes allennerly, and also upon all other acts to be made for plantation of kirks by the commissioners appointed by his Majestie and Estates for that effect : And it is declared, that these presents shall be without prejudice to the titulars and others having interest to pursue for rectifying of such valuations, as are or shall be enormely undervalued, and also without prejudice of the minister's maintenance and augmentation proportionally effeiring to the true and just worth of the teind, &c.

In addition to manse and glebe, the act 1663, *cap. 21*, makes a further provision for the clergy. It contains, first, a declaration, that if it shall be necessary to resort to poinding, in order to get payment of stipend, the minister may get the goods appraised “ by honest “ sworn men, upon the ground of the lands and place “ where the goods are, which shall be as sufficient as (if) “ the same were done at the said market-crosses” of the head burgh of the shire. Secondly, It ordains,

That where competent manses are not already built, the heritors of the paroch, at the sight of the bishop of the diocess, or such ministers as he shall appoint, with two or three of the most knowing and discreet men of the paroch, build competent manses to their ministers, the expences thereof

not exceeding one thousand pounds, and not being beneath five hundred merks ; and where competent manses are already built, ordains the heritors of the paroch to relieve the minister and his executors of all cost, charges, and expences, for repairing of the foresaid manses, declaring hereby, that the manses being once built and repaired, and the building or repairing satisfied and payed by the heritors in maner foresaid, the saids manses shall thereafter be upholden by the incumbent ministers during their possession, and by the heritors in time of vacancy, out of the readiest of the vacand stipend. As also, that every minister (except such ministers of royal boroughs who have not right to glebes,) have grass for one horse and two kine, over and above their gleb, to be designed out of kirk-lands, and with relief according to the former acts of Parliament standing in force ; and if there be no kirk lands lying near the minister's manse, out of which the grass for one horse and two kine may be designed, or otherways, if the saids kirk-lands be arable land, in either of these cases, ordains the heritors to pay to the minister and his successors yearly the sum of twenty pounds Scots for the said grass for one horse and two kine, the heritors alwayes being relieved according to the law standing of other heritors of kirk lands in the said paroch ; and because several kirks have no glebs as yet designed to them, it is hereby specially provided, that in all designations of glebs, incorporat acres, in village or town where the heritor hath houses and gardens, the same shall not be designed, he alwayes giving other lands nearest to the kirk ; and his Majesty, with advice foresaid, for special causes and considerations, declares, that this present act, as to the manses, is to have force, as the same had been made and dated the 14th of March 1649.

Where land is taken for a glebe chiefly, or perhaps wholly, from the property of one heritor, without regard to the proportion of his interest in the parish, the

act 1594, *cap.* 199, "for relief of them whose lands  
"are or shall be designed for manses and glebes to  
"ministers," ordains,

That quhair designation of manses and gleibes beis maid  
and tane of kirk-land, (the haill parochin, or ane greate part  
thereof being kirk-land, and the minister notwithstanding  
designed to the kirk-land maist ewest and adjacent to the  
kirk,) That the fewars, possessours and tacksmen, out of  
quhais landes the manses or gleibes are designed, sall have  
their reliefe of the remanent parochiners, quha are fewars,  
possessours, and tackesmen of kirk-landes, lyand within the  
saide parochin *pro rata*.

This act seems to apply only to the case of church  
lands. But if there be no church lands, and the de-  
signation of the glebe is made from temporal lands,  
a similar relief is provided by the act 1644, *cap.* 31,  
"which gives power to every presbytery to designe  
"manses and gleibs to ministers at every parochie kirk  
"within their several bounds, where they have not been  
"at all designed, or not to the full quantity; or where  
"the manses and glebes are decayed or become unpro-  
"fitable by inundation, sanding, or any other extra-  
"ordinary accident, out of kirk-lands ewest to the pa-  
"roche kirk, according to the order in the act of Par-  
"liament in the year 1593, borrowstoun kirks being  
"always excepted." This act also provides, that the  
owner of the lands designed shall have relief from the  
whole heritors of the parish proportionally, viz. "He-  
"ritors of kirk-lands when kirk-lands are designed, and  
"the heritors of all lands of other holding when the  
"designation is of other lands nor kirk-lands." By the  
act 1649, *cap.* 45, it was provided, that where glebes



are situated at too great a distance from the manse, new ground might be designated in their stead nearer to the manse. This power of new designation was conferred on the commissioners of teinds.

Both of the preceding acts were passed during the rebellion against Charles I., and were rescinded at the Reformation. But all the institutional writers are of opinion, that the act 1663, *cap.* 21, above quoted, revived the rescinded acts, so far at least as respects the competency of designing arable glebes out of temporal lands.

Bankton, II. 8. 126.—Stair, II. 3. 40.—Erskine, II. 10. 59.—Connell on the Law of Parishes, and cases there cited.—And the decisions of the Court confirm this opinion.

#### DECISIONS.

Minister of Dysart, 17. Dec. 1664, Mor. 5121.—Minister of Kirkaldy, 26. March 1685, *ib.*—Fullerton, 17. Dec. 1779, *ib.* 5123.—Heritors of Elgin, 28. Feb. 1769, *ib.* 8508.—Minister of Falkland, 8. Feb. 1793, *ib.* 5155.—Botriphnie, 3. July 1805, Connell, p. 326.—Minister of Kingsbarns, 10. June 1794, Mor. 5140.—Balfour Hay v. Erskine, 11. June 1799, *ib.* App. No. 2, *voce* "*Glebe*."—Minister of Little Dunkeld, 14. May 1791, *ib.* 5153.—Logan v. Reid, 16. May 1799, *ib.* App. No. 1, *voce* "*Glebe*."—Minister of Madderty, 14. Nov. 1794, *ib.* 5153.—Minister of Newton, 3. June 1807, *ib.* App. No. 6, *voce* "*Glebe*."—Anderson, 22. May 1810, affirmed, 6. July 1814, Dow, II. 433.—Minister of Panbride, 24. Jan. 1815.—Minister of Kilwinning, 3. Jan. 1745, App. No. 3, *voce* "*Glebe*."—Carfrae, 13. May 1814, F. C.—Hodges v. Bryce, 27. Feb.

1756, Mor. 5162.—Steel v. Dalrymple, 27. July 1748, *ib.* 5161. — Grierson, 26. June 1778, *ib.* 5162.— Lawrie, 10. Feb. 1804, *ib.* App. No. 4, *voce* “*Glebe*.”—Minister of Panbride, 18. May 1809.—Minister of Dunfermline, 19. Nov. 1805, Mor. App. No. 1, *voce* “*Manse*.”—Minister of Dollar, 9. July 1807, *ib.* No. 7, *voce* “*Glebe*.” — Wilson, 10. June 1818, F. C.— Hay, 2. Dec. 1778, Mor. 5148.—Duff, 28. Feb. 1769, *ib.* 5147. — Dymock, 25. Feb. 1779, *ib.* 5149.—Dundas, 6. Dec. 1805, *ib.* App. No. 5, *voce* “*Glebe*.” —Spence, 1. Dec. 1808, F. C.

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## HIGHLANDS.

It appears from the acts passed by the Parliament of Scotland prior to the Union, that a spirit of jealous hostility towards the Lowlanders became so violent among the natives of the Highlands of Scotland, as to call for the frequent interference of the legislature. As these enactments, however, are now merely interesting as they illustrate the history of the country, it will be sufficient to mention their dates :

1528, *cap.* 6,—1581, *cap.* 112,—1585, *cap.* 16,—1587, *cap.* 94,—1587, *cap.* 108,—1587, *cap.* 97,—1587, *cap.* 101,—1597, *cap.* 266,—1600, *cap.* 28,—1690, *cap.* 4,—1693, *cap.* 39,—1695, *cap.* 37,—1696, *cap.* 40,—and 1702, *cap.* 8.

The Highlanders took an active part in the Rebellions of 1715 and 1745 ; and, immediately after these calamitous events, the legislature of the united kingdom interposed to restore tranquillity to this disturbed

portion of the country. The act 1. of Geo. I. *cap.* 34, "for the more effectually securing the peace of the "Highlands of Scotland," was passed to prohibit the use of swords or fire-arms at any public meetings. It seems to have referred specially to the rebellion 1715, and to the state of society at the time.

The statute 11. of Geo. I. *cap.* 25, is much of the same import.

The statute 19. of Geo. II. *cap.* 39, "for the more "effectually disarming the Highlands of Scotland, "and for more effectually securing the peace of the "said Highlands," &c., applied more immediately to the condition of the country after the rebellion 1745. It was amended and explained by the statutes 21. of Geo. II. *cap.* 34, and 26. of Geo. II. *cap.* 29; and repealed, in so far as it restrains the use of the Highland dress, by the statute 22. of Geo. III. *cap.* 63.

In like manner, the statute 33. of Geo. II. *cap.* 26, was passed "to revive and continue the 21. of Geo. II. " *cap.* 34, as to the trial and punishment of high treason in the Highlands; and two other acts in the 19th "and 21st of Geo. II. for disarming the Highlands, "and securing the peace thereof."

The statute 25. of Geo. II. *cap.* 41, appoints commissioners for improving the Highlands; and their attention is called to three objects: By sections 25. 26. and 27, they are empowered to divide large parishes: by sect. 28. 29. and 30, to establish schools; and by sect. 32. to erect prisons.

The statute 15. of Geo. III. *cap.* 29, was passed to repeal the act 1633 and 1693; the former "anent

“ the clan Gregor, the latter anent justiciary in the  
“ Highlands ; and to revive the act 1661 relative to  
“ the people called the Macgregors.”

And the statute 4. of Geo. IV. *cap.* 79, was passed  
“ for building additional places of worship in the High-  
“ lands and Islands of Scotland.” It was afterwards  
amended by the statute 5. of Geo. IV. *cap.* 90, which  
repeals 4. Geo. IV. *cap.* 79, except in so far as relates  
to the appointment of commissioners.

II. Commissioners of Treasury are directed to issue  
£. 50,000 for the purposes of the act, and to render  
accounts to the Exchequer.

III. IV. V. VI. and VII. The heritors and pres-  
bytery to have the power of defining the district : if they  
cannot agree, the matter to be referred to the sheriff-  
depute of the county. The situation and size of the  
building to be determined by the commissioners.

IX. Heirs of entail may grant land, part of their en-  
tailed estate, for a glebe, without incurring any ir-  
ritancy or forfeiture.

XIII. The amount of the minister's stipend shall in  
no case exceed £. 120, including communion elements,  
to be paid at the terms fixed by 50. Geo. III. *cap.* 84.  
See title “ Commission of Teinds.”

The patronage of the new churches to be in the  
crown : in other respects, the rights of the ministers,  
and the government of the churches, to be on the same  
footing with other parishes.

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HIGHWAYS, BRIDGES, AND FERRIES.

The statutes which relate to roads, &c. in Scotland are generally of local interest : each county has an act containing regulations that apply only to that district. But there are some statutes applicable to the whole of Scotland, of which it is necessary to give some account. These admit of being noticed under three classes ; 1. Acts respecting the highways leading to royal burghs ; 2. Acts regarding roads, not being turnpike ; and the general turnpike road act. The first branch of this enumeration has already been discussed, *voce Burgh Royal*, Div. VI. p. 218.

As to roads not being turnpike, by the act 1617, *cap.* 8. *sect.* 8,

The saids commissioners and justices of peace are hereby authorised, with power to give order (as they shall think most convenient, and with least grief to the subjects) for mending of all highwayes and passages, to or from any market-towne or sea-port within that shire : and shall call before them all such persons as shall strait these passages or otherwayes, (as by casting of ditches and fuseis thorow the same), shall make those highwayes noysom and troublesome unto passengers, and shall punish and fyne them according to the qualitie of their offense : And to the effect it may be known of what breadth all common highwayes should be to market-townes, our Sovereigne Lord, with advice foresaid, declares, that the same should be of twentie foot of measure in breadth at the least ; and where any are of larger breadth, they ordaine the same so to remain unaltered or straited ;

and that the saids justices maintaine the same, with all other wayes from any town in the paroch, to the paroch churches, in the estate as they are; and where they finde any necessitie of other ways from any town in the parochin to paroch churches, they shall informe his Majesties secret council thereof, who shall give them (after sufficient information) their direction thereanent; according whereunto they shall be holden to proceed: And if any person refuse to concur for mending of highwayes and passages, the said justices shall have power to censure and punish them according to their discretion; with provision alwayes, that if in their proceedings therein, they use such severitie or rigour as may move just complaints against them, they shall be censured therefore by his Majesties secret council, as appertaineth.

Similar instructions are given to the justices by the subsequent act 1661, *cap.* 38.

The statute 1669, *cap.* 16, is in the following terms:

Our Sovereign Lord considering how necessar it is for the good of the people, that highwayes be made and maintained for ready and easie passage, travel and traffick through the kingdom; and that the care thereof which hath been laid upon the justices of peace, hath yet for the most part proven ineffectual, in regaird the saids justices have not had special orders and warrands for that effect: For remeid whereof, his Majesty, with advice and consent of the Estates of Parliament, doth appoint and ordain the sheriff of the shire, and one of his deputies, being alwayes an heretor therein, and the justices of peace in each shire, to convene at the head burgh of the shire upon the first Tuesday of May yearly, for ordering of highwayes, bridges and ferries; with power to them, or major part of them that shall happen to convene, to set down a particular list of the highwayes, bridges and ferries within their bounds, and to divide the paroches of the saids bound as they lye most

to the several highwayes to be repaired, and as they may have the most equal burden, and to appoint such of their number or others overseers of such parts and portions of the saids highwayes as are most convenient and nearest to their ordinary residence, and to nominate such of their number as they see fit, to survey and give an account of the highwayes, bridges and ferries unto the rest; with power to them to appoint meetings from time to time, till the said survey, list and division of the saids highwayes be closed; which persons, or any one of them to whom the particular portions of the saids highwayes shall be committed, are hereby authorised and strictly required to call and convene all tenants and cottars, and their servants, within the bounds appointed for their parts of the highwayes, by public intimation at the paroch kirks upon the Sabbath day, immediately after the first sermon, or any other way that they shall think fit, to have in readiness horses, carts, sleds, spades, shovels, picks, mattocks, and such other instruments as shall be required, for repairing of the saids highwayes, and to convene at such places thereof as they shall be required, and in such proportion and with such furniture as the saids justices or overseers shall appoint, and that in the most equal and proportionable way, as the saids justices and overseers will be answerable. With power to them to design such of the saids persons as they find to be most skilful, to attend and direct the rest, and to appoint them fit wages for their attendance; providing that the dayes they are required to work do not exceed the number of six dayes for man and horse yearly for the first three years, and four dayes yearly thereafter, and that they be only betwixt the bear seed yearly, and hay time or harvest thereafter; with power to the saids justices or overseers to poind the readiest goods of the absents, for twenty shillings Scots money for the absence of ilk man daily, and thirty shillings for the man and horse, without further solemnity but apprising the same upon the

ground of the land, and therewith to hire others in place of the absents; and in case the saids absents shall have no poindable goods, to punish them in their persons as they shall see cause. Which highwayes shall be twenty foot of measure broad at least, or broader, if the same have been so of before, and shall be so repaired, that horses and carts may travel summer and winter thereupon; and if any part of the saids highwayes cannot well be continued as now they are, but require to be changed, the saids justices shall appoint three of their number to visit the places where the highwayes need to be changed, and to set down meiths for the new way in place thereof, and upon oath to estimate the damage of the parties prejudged thereby, and to deliver the same to them in writing under their hands, to the effect the same may be satisfied by the whole shire, in manner after specified. Which justices are ordained again to convene at the head burgh of the shire the first Tuesday of June yearly, and thence every Tuesday from fourtnight to fourtnight, at such places as shall be then appointed during the moneths of June and July, for three years next ensuing, for taking accompt of the said several justices and overseers of the respective proportions of highwayes committed to them, and to fine those justices and overseers who shall failzie; still increasing the saids fines till they give obedience and perform their part, and to poind therefore upon the ground of the lands where their goods shall be found, without further solemnity. With power also to the saids justices to visit the ferries in their shire, and where the ferries ly betwixt two shires; that they correspond with the justices of the other shire, to the end they may appoint fit and sufficient boats, and convenient landing places, and so to regulate all things concerning the ferries, as his Majesties lieges may be readily and conveniently served, and at reasonable rates, and to punish all such as shall neglect or transgress the rules set down be them for the effect foresaid.



And because the work of the inhabitants within the severals bound will not be able sufficiently to repair the highwayes and others foresaid : Therefore his Majesty, with advice and consent of the said Estates, doth hereby authorize and require the whole freeholders and heretors of the several shires, to convene at the respective head burghs the said first Tuesday of June yearly, and to call for an accompt from the justices of peace of what is needful for reparation of the highwayes and others foresaid, and what charges and expenses is requisite for promoving thereof ; and for making or repairing bridges and ferries where they shall be found needful, and accordingly to stent the heretors of the said shire, comprehending the heretors of the burrough-lands therein, in what shall be found necessary for the effect foresaid, not exceeding ten shillings Scots upon each hundred pound of valued rent in one year, which is to be uplifted be the saids justices, or whom they shall appoint, be poinding as said is, and employed for the use foresaid ; and of which they shall be obliged to give an accompt to the saids heretors at the next Michaelmas head court yearly : Likeas, his Majesty, with consent foresaid, prohibits and discharges all persons whatsoever to break or abuse the saids highwayes by plowing up any part thereof, laying stones, rubbish or dung thereon, or any way breaking or pooling the same, or turning in, or damming water thereupon ; and ordains the conveener of the saids justices, at their meeting the said first Tuesday of May yearly, to take an oath of the remanent justices and of the constables, of what damage they know done to the highwayes, bridges or ferries since the year preceeding, in any of the foresaid particulars prohibited, or any other, and by whom : Upon which the saids justices shall convene the transgressors, and in case of conviction by oath or witness, shall fine them as they shall see just, and shall poind therefore in manner foresaid, and apply the same for the use of the saids highwayes ; with power also to the saids

justices to call for an accompt of all destinations and mortifications to bridges, causa's, ferries or highwayes, and to cause the intrometters therewith, that have not applied the same to these proper ends, to make payment thereof to such persons as they shall appoint, to be employed to the uses for which the same were destinat: Likeas his Majesty ordains the conveyer of the saids justices to give a particular accompt under his hand of what progress is made in the reparation of the saids highwayes, ferries and bridges, upon the third Tuesday of July next to come, and so forth yearly, to the Lords of his Majesties Privy Council, who are hereby empowered to grant letters of horning and poinding for the effects foresaid, if need be.

And further, his Majesty, with consent foresaid, gives power to the said Lords of his Majesties Privy Council to ordain the levying of moderat customs at bridges, causa's or ferries, for the building, repairing and upholding thereof, in case the said stent shall not be able to accomplish the same, and to appoint the endurance thereof as they shall see cause: with power also to them, that in case the saids justices and heretors failzie in the performance of the things by this act committed to them, so that the highwayes shall not be sufficiently repaired, nor bridges and ferries sufficiently provided for, to take such course for making the same effectual as they shall judge expedient, and to punish the saids heretors and justices, as their neglect shall deserve: with power likewise to the saids Lords of Privy Council to appoint and commissionat overseers for putting the premisses in execution where they shall see cause; which overseers so appointed shall have the same power as is by this present act committed to the justices of peace foresaid: And farther, his Majesty ordains, that where laboured land lyes upon the sides of highwayes, the said laboured land shall be fenced with dike and ditch or hedge; yet so as neither dike, nor ditch, hedge, nor any part thereof, be within the forementioned breadth appointed for the highway: And in case any

laboured land so lying shall not be fenced betwixt the first day of August 1671, then and in that case, the saids justices are hereby authorized and required to cause poind in manner foresaid, the labourers of the said land, for four shillings Scots for each eln which shall not be so fenced after the said time, and to apply the said fines for the fensing thereof in manner foresaid : Likeas, it is hereby declared, that whatsoever stones, rubbish, dung or other impediments beis thrown or found lying upon the saids highwayes, or water turned in or dammed thereupon, shall be esteemed and held as done by the labourers of the land next adjacent to the highwayes where the damage is done, who shall be fined therefore be the said justices and overseers, reserving right to the saids labourers to call before the saids justices any other for their relief, who have been the real actors of the skaith.

In the statute 1661, *cap.* 41, there is the following clause :

And for the further encouragement of the said heritors, wadsetters and liferenters, to go about the ready observance of the said act, liberty and power is granted to them, at the sight of the sheriffs, stewarts, lords of regalities, barons, and justices of peace, in their respective bounds, to cast about the highwayes to their conveniency, providing they do not remove them above two hundred ells upon their whole ground : excepting always herefrom, burgh and incorporate acres, which are noways to be packed or inclosed, unless the heritors thereof shall think it meet and expedient.

And this act is specially ratified by the statute 1685, *cap.* 39.

To remedy the inconvenience felt by tenants and cottars being called out to make and repair the highwayes during seed time and harvest, as appointed by the act 1669, *cap.* 16, before quoted, the statute 1670, *cap.* 9, declares,

That the respective sheriffs and justices to whom the execution of the said act is committed, may require all persons liable to work and repair the said highwayes, bridges, and ferries, to convene the number of dayes they are liable, at any time or season they shall judge most convenient, seed time and harvest being alwayes excepted. And sicklike, where the wayes ly at great distance from those who are liable to repair the same, that it shall be leisome to the saids justices and overseers to dispencc with those persons who live at such a distance, they paying six shillings yearly for ilk man, and twelve shillings for ilk horse which ought to have been employed in the said work; which sums of money so to be payed in, shall be expended at sight of the said sheriff and justices, on workmen to work in place of those who live at such distances, in manner foresaid.

By the act 1686, *cap.* 8, the commissioners of supply in the several shires are authorised and required,

To meet with the justices of peace, and act in the same manner as they are warranted to do by the foresaid acts, with power to them at their first meeting to choose their own clerk; and declares, That any five of the whole number shall be a quorum, excepting the shires of Clackmannan, Kinross, and Cromarty, wherein three to be a quorum; and ordains the first dyet of their meeting for this year to be the last Tuesday of June next; and that the sheriff of the shire, or his depute, cause intimate that dyet, and the first dyet of meeting yearly thereafter, at each parish kirk, upon the Sunday before, under the pain of five hundred merks Scots. And in case any of the justices of peace, or commissioners of supply residing within the shire, shall be absent the said last Tuesday of June next, or the first dyet of meeting yearly thereafter, they shall be fined by the quorum met, in twenty merks Scots, for ilk dyet's absence; and in case a quorum of them shall not meet, the sheriff or his depute is hereby im-

powered to fine each of the absents in twenty merks Scots ; which fines shall be applyed for reparation of the highways and bridges : And whereas by the foresaid act in the year 1669, the time for the inhabitants to work at the reparation of the highways is appointed not to exceed six days yearly the first three years, and four days yearly thereafter ; his Majesty, in regard of the present condition of the highways and bridges, doth, with advice foresaid, ordain that these working days shall be six yearly, for the space of five years, from and after the last Tuesday of June next : And seeing it falls out sometimes, that bridges and ferries are upon the confines of two shires, and it being just that both shires in that case should be burthened with the expense of reparation ; his Majesty, with advice foresaid, doth ordain the justices of peace, and commissioners of supply in both shires, to meet and adjust the expense of the said reparation proportionally, according to the respective valuations of these shires ; and that the sheriffs of these shires, or their deputies convene them ; and in case they do not meet, grants warrant to direct general letters for charging them to that effect. And his Majesty, with advice foresaid, declares, That the several shires and burghs shall be holden to repair the present standing bridges within their respective bounds, and being repaired to uphold the same ; and if they suffer them to fall, his Majesty's privy council is hereby impowered to fine them in as much as will repair or rebuild these bridges. And it is hereby ordained, That where customs are collected at bridges, or causeys, the same shall be employed in the first place for repairing these bridges and causeys.

The statutes 2. of Geo. I. *cap.* 22, and 5. of Geo. I. *cap.* 11, were passed to make “ the laws for repairing the highways more effectual.”

By the statute 5. of Geo. I. *cap.* 30, the execution of these several statutes respecting highways is com-

mitted to the justices of the peace, and their powers and duties are specially defined and pointed out.

The statute 11. of Geo. III. *cap.* 58, “for widening the highways in that part of Great Britain called “Scotland,” directs the justices of the peace, and commissioners of supply, to keep roads in repair; and orders that there shall be two annual meetings for road-business, in place of the one appointed by the act 5. of Geo. I. already noticed.

The statute 12. of Geo. III. *cap.* 45, “for the better regulation of carters, carriages, and loaded horses, “and for removing obstructions and nuisances upon “the streets and highways within that part of Great “Britain called Scotland,” is as follows :

“I. Whereas many accidents happen, and great mischief “is frequently done upon the streets and highways within “that part of Great Britain called Scotland, by the negligence or wilful misbehaviour of persons driving carriages : “And whereas the law, as it now stands, is insufficient “for correcting these abuses, or punishing the persons “guilty of them ; may it therefore please your Majesty that “it may be enacted,” That from and after the 1st day of September 1772, no person or persons whatsoever shall drive any cart, car, with or without ledges, or any waggon, sledge, or dray, of any kind whatsoever, upon the high roads or streets within that part of Great Britain called Scotland, unless the master or owner of such cart, car, with or without ledges, or such waggon, sledge, or dray, shall place upon some conspicuous part of such cart, car, with or without ledges, waggon, sledge, or dray, the name or names of the real owner or owners of any such carriage, and the place of residence of the real owner or owners of any such carriage, or of the house or farm where the owner or owners general-

ly employ such carriage, in different colours from the body of such carriage; and also the numbers (beginning number one and so upwards) where more carts, cars, or other carriages than one belong to the same person, in order that the driver may the more easily be convicted of any disorder or misbehaviour committed by him or her.

II. And be it also enacted by the authority aforesaid, That if any person shall drive any of the before-mentioned carriages upon any of the said high roads or streets, not having the name or names of the owner or owners, and the place of their residence, or of the house or farm where the owner or owners generally employ such carriage, and where more carriages than one belong to the same person, the number placed upon some conspicuous part of the same; every such person, offending in any of the cases aforesaid, or the owner or owners of such carriage respectively, shall forfeit a sum not exceeding twenty shillings sterling, and not less than five shillings sterling, for each offence committed by him, her, or them.

III. And be it also enacted by the authority aforesaid, That every time the property of any of the above carriages shall be altered, the succeeding owner or owners thereof shall, from time to time, within fourteen days next after he, she, or they shall become owner or owners thereof, and shall have used the same, cause the name or names of the former owner or owners, and number thereof, to be taken off from every such carriage before mentioned, and the name or names and place of residence of the succeeding and real owner or owners, and number thereof, where more carriages than one belong to the same person, to be placed, in manner aforesaid, upon some conspicuous part of such carriage or carriages; and every person or persons who shall omit to do the same shall forfeit a sum not exceeding twenty shillings sterling, and not less than five shillings sterling for each offence.

IV. And be it enacted by the authority aforesaid, That if any person or persons shall place a false name or place of residence upon any such carriage belonging to him, her, or them, the person or persons so offending shall forfeit, for every such offence, a sum not exceeding forty shillings sterling.

V. " And, in order that the inconveniences arising from " the negligence of chaise-drivers, carters, draymen, sledge- " men, carmen, and waggoners, and drivers of any other " carriage whatsoever, may be the more easily prevented ;" be it therefore enacted by the authority aforesaid, That from and after the said first day of September 1772, if any chaise-driver within that part of Great Britain called Scotland shall be found sitting in his chaise without another person on one of the horses driving the same ; or if any carter, drayman, carman, sledge-man, or waggoner, or the driver of any other carriage whatsoever, (coaches, chaises, phaetons, curricles, chairs, and such other carriages, which are usually driven by a person sitting within or upon the carriage, and such carriages as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses excepted,) shall ride upon any such carriage, (not having some other person on foot or on horseback to guide the same,) on any street of any city or town, or on any highway within six miles of the city of Edinburgh, or four miles of the city of Glasgow, or two miles of any other city, burgh, market town, or burgh of regality, or barony ; or if the driver of any carriage whatsoever on any part of any street or highway shall, by negligence, or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway, or shall, by negligence, or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage, or of his Majesty's subjects on the said highways ; or



if the driver of any cart, car, dray, or waggon, on any highway whatsoever, when riding on his carriage, shall not dismount (so as the better to guide his horse or horses and carriage) when required by any person apprehending danger from such carriage; every such driver offending in any of the cases aforesaid shall, for every such offence, forfeit any sum not exceeding ten shillings sterling, in case such driver shall not be the owner of such carriage, and in case the offender be owner of such carriage, then any sum not exceeding twenty shillings sterling.

VI. "And whereas several inconveniences do arise, and many accidents have happened, by carts, cars, and other carriages above mentioned, being drawn abreast or alongside another, so as the passage of the streets and highways in that part of Great Britain called Scotland is entirely obstructed, and also by the drivers of such carriages not having bridles or halters upon their horses;" be it therefore enacted by the authority aforesaid, That from and after the said first day of September 1772, no driver or drivers of carts, cars, or other carriages above mentioned, shall drive their carriage or carriages abreast or alongside of any other carriage or carriages, so as wilfully to obstruct the free passage of such streets and highways respectively, but shall follow one after another upon the same, and shall have bridles or halters upon every horse in any of the above carriages, which bridles or halters upon the foremost horse shall, (in all carriages not drawn by more than two horses,) be tied with a rope, or some other thing of sufficient strength, to the halter or bridle of the horse behind; and which rope or bridle the driver of every such carriage shall have in his or her hand; and every person so offending in the premises shall forfeit a sum not exceeding twenty shillings sterling, nor less than five shillings sterling, for every such offence.

"VII. And whereas the free passage of his Majesty's sub-

“jects is often obstructed, and their persons put in danger,  
“from the present irregular and disorderly method of driving  
“horses with or without loads, and by leading carts, wag-  
“gons, sledges, coaches, chaises, and other carriages, after  
“the horses have been unyoked and taken from the same;  
“and also stone, lime, timber, rubbish, and the bodies of  
“dead horses, and other animals, and other articles which  
“do obstruct such free passages as aforesaid, upon the  
“streets and highways within that part of Great Britain  
“called Scotland;” be it therefore enacted by the authority  
aforesaid, That from and after the said first day of September 1772, no drivers of horses, or other beasts of burthen, with or without loads, shall drive their horses or other beasts of burthen abreast, so as wilfully to obstruct the free passage of his Majesty’s subjects, or to put their persons in danger, but shall, as much as may be, drive them in a line, one after another in a regular manner, having a bridle or halter affixed to the head of each horse or beast of burthen; and that the driver or owner of any cart, waggon, sledge, coach, chaise, or other carriage, shall not be permitted to leave the same upon any street or highway, within that part of Great Britain called Scotland, after the horse or horses have been unyoked and taken from such cart, waggon, sledge, or other carriage respectively, except only with respect to such carriage, during such reasonable time as the same shall be loading or unloading; nor shall it be allowable to any person or persons to leave stones, lime, timber, rubbish, the bodies of dead horses, or of other animals, or other nuisances, upon the streets and highways aforesaid, so as to obstruct the free passage of the same; and that every person offending in the premises shall forfeit a sum not exceeding twenty shillings Sterling, and not less than five shillings Sterling, for each offence.

“VIII. And whereas many disputes frequently happen  
“between the drivers of loaded horses and other beasts of

“burthen, and the drivers of carts, and such other carriages, and between the drivers of coaches, chariots, chaises, and such like carriages, travelling upon any street or highway within the limits aforesaid, about giving the way to, or making way for one another ;” be it enacted by the authority aforesaid, That the driver of every such loaded horse, horses, or other beasts of burthen, and the driver of every cart, car, or such like carriage, and every coach, chariot, chaise, and such like carriage, shall be obliged, upon meeting another loaded horse, or other beast of burthen, or another carriage, of whatever kind, to make way, by holding or driving to his own left hand, or what is commonly called holding to the near side, and that without distinction, whether the carriages so meeting one another are loaded or unloaded ; and that every person offending in the premises shall forfeit a sum not exceeding twenty shillings Sterling, and not less than five shillings Sterling, for every such offence.

IX. And be it further enacted by the authority aforesaid, That prosecutions against offenders, in respect of the several acts and neglects which are made punishable by this act, may be brought summarily before the sheriff depute or substitute, or any justice of the peace of the county within which the offence shall be committed, or before any of the magistrates of cities or boroughs where the offences have been committed within their jurisdiction, or before any other judge competent ; and that judgment shall proceed and be given against the offender or offenders, either upon his or their own confession, or upon the oath or oaths of one or more credible witnesses.

X. And be it further enacted by the authority aforesaid, That in all and every of the neglects and offences punishable by this present act, it shall be lawful for any person or persons aggrieved, and intending to sue for the recovery of the penalties authorised by this act, upon the authority of the same, and without any other warrant, to apprehend the

offender or offenders, and either to carry him, her, or them, or cause him, her, or them to be carried, by the assistance of any peace officer or other person or persons, before any justice of the peace, or other judge competent, within the bounds where the offences shall be committed ; which judge is hereby empowered and required, upon conviction of the offender or offenders, by his or their own confession, or the oath or oaths of one or more credible witnesses, to deal with him, her, or them, in manner as herein-before directed ; and any person or persons, who shall see any of the offences before recited committed, shall and may, by the authority of this act, without any other warrant, seize and detain the horses, carts, cars, sledges, waggon, drays, coaches, chariots, landaus, and other such like machines and carriages, and the horses belonging to the several offenders, till such time as sentence shall be pronounced by the competent judge concerning the offence ; and in case the penalties adjudged by him in consequence of this act shall not be paid, or security found for the same, within twenty-four hours after conviction and sentence, then the judge, before whom the offender shall be convicted, is hereby authorised and required to issue his warrant, directed to a constable or other peace officer within his jurisdiction, to cause sale to be made of the subject or subjects detained, in case the same happens to be the property of the offender or offenders, for raising the money forfeited by him or them, rendering to such offender or offenders the overplus, after deducting the charges of sale, and the expense of keeping the subject detained, both which shall be determined by the judge before whom the offender or offenders are convicted ; and in case the subject or subjects aforesaid do not happen to be the property of such offender or offenders, that then the same shall be returned to the lawful owner or owners thereof ; and it shall be lawful for the judge aforesaid, and he is hereby required, in case the fine shall not be instantly paid upon conviction, or sa-

tisfactory security given for the same, to commit the offender or offenders to gaol, there to remain until such time as the fine shall be paid, or satisfactory security found for the same or until the expiration of two months after such commitment.

XI. And be it further enacted by the authority aforesaid, That if any person or persons, charged with being guilty of any of the offences made punishable by this act, shall, upon the seizure of, or an attempt to seize, under the authority of this act, his or their persons or property, or the property of others, under their care as aforesaid, resist, abuse, or maltreat any person or persons whatsoever; or if any person shall aid or assist him, her, or them, in so doing, he, she, or they shall respectively forfeit the sum of twenty shillings Sterling for every such last-mentioned offence; the offence to be proved, and judgment to proceed thereupon, in the same way and manner as herein-before provided for in the case of the other before-mentioned offences against this act.

XII. And be it also enacted by the authority aforesaid, That if any person or persons, who shall be apprehended for having committed any offence against this act, shall refuse to discover his or her name and place of abode to any judge competent before whom he or she shall be brought, such person or persons, so refusing, shall be committed by the judge to any gaol of the county, there to remain until such time as he, she, or they, shall discover his, her, or their name or names, and place or places of abode.

XIII. And be it likewise enacted by the authority aforesaid, That the fines and forfeitures arising from the offences made punishable by this act shall be applied, the one-half to the informer or prosecutor, and the other half to the collector of the land-tax of the county within which the offence shall have been committed, and by him to be accounted for as part of the funds established by law for the detection and

punishment of vagrants within that part of Great Britain called Scotland.

XIV. Provided always, That no prosecution under this present act shall lie against any person or persons whatsoever, unless the same shall be brought within three months of the time at which the offence or offences charged was or were actually committed; and that in all cases an appeal shall lie against every sentence or judgment of one or more justices of the peace, made under and by virtue of the powers given by this act, to the next quarter sessions of the peace for the county within which the offence was committed, whose determination shall be final; and that the said appeal shall be competent to every person and persons having an interest, and apprehending him, her, or themselves to be aggrieved by such sentence and judgment.

XV. Declaring always, That nothing herein contained shall extend, or be construed to extend, to limit, lessen, or take away, any of the jurisdictions, powers and authorities, rights, privileges, and immunities, of any of the cities and royal boroughs within that part of the united kingdom called Scotland, or of the magistrates and town-council of the same, as contained in acts of Parliament, or charters and other grants from his Majesty and his royal predecessors; nor shall this present act be any way derogatory to, or in any respect whatsoever be understood to encroach, repeal, or take away the said jurisdictions, rights or immunities; any thing herein contained to the contrary notwithstanding.

The statute 53. of Geo. III. *cap.* 117, “to prevent “damage to certain bridges in Scotland from the floating of timber,” declares,

That from and after the passing of this act, no timber, trees, logs, deals or spars, shall be floated through any arch, or between the piers of any bridge begun to be erected over any river in Scotland, nor through any arch, nor between

the piers of any bridge whatever in Scotland, between the fifteenth day of March and the first day of November, when the same shall be under such repair, that a timber frame or centering for the temporary support of the bridge is in use, notice thereof being given by and under the authority and direction of the sheriff or steward depute or substitute of the county or stewartry in which such bridge shall be situated in manner herein-after mentioned; nor shall any timber, trees, logs, deals or spars, be suffered to approach within one thousand yards of the same, unless such timber, trees, logs, deals or spars, shall be fastened together as a raft or rafts, or, being fastened together as a raft or rafts, unless there shall be a person to manage and conduct the same; nor shall more than one raft at the same time be suffered to pass through any arch, or between the piers of any such bridge begun to be erected or under repair as aforesaid: And if any owner or owners of any timber, trees, logs, deals or spars, shall suffer the same to pass through any arch, or between the piers of any bridge begun to be erected in Scotland, or when so under repair, or to approach within one thousand yards of the same, unless such timber, trees, logs, deals or spars, shall be fastened together as a raft or rafts, or being fastened together as a raft or rafts, unless there shall be a person to manage and conduct the same, or shall suffer more than one raft to pass through any arch, or between the piers, of any such bridge, at the same time; every such owner or owners, besides being liable for any damage to be occasioned by any such timber, trees, logs, deals or spars, or such raft or rafts, shall forfeit the sum of five pounds sterling for each offence; to be recovered to the use of the person or persons suing for the same before any one or more of his Majesty's justices of the peace of the county or stewartry where the offence shall be committed, or where the offender or offenders shall be or reside: Provided always, that previous notice, pursuant to an order to that effect, to be made by the sheriff or steward

depute of the county or stewartry in which such bridge or any part thereof shall be situated, (which order the said sheriff or stewart is hereby required to make upon the application of any person or persons undertaking to build or repair such bridge,) shall have been given by advertisement in some newspaper of the county or stewartry in which such bridge shall be situated, and if no newspaper shall be printed in such county or stewartry, then in some newspaper printed in the nearest adjoining county or stewartry, and also by a written or printed paper affixed upon the door of each parish church of every parish through which the river shall pass, situated above such bridge, specifying the time during which the erection or repair of such bridge will require a timber frame or centering as aforesaid, during which time no timber, trees, logs, deals or spars, shall be floated through any arch, or between the piers of such bridge, or be suffered to approach within one thousand yards of the same, unless such timber, trees, logs, or spars, shall be fastened together as a raft, and unless there shall be a person to manage and conduct the same as aforesaid.

II. And be it further enacted, That if any timber, trees, logs, deals, or spars, shall be found floating at or resting on the water against any bridge begun to be erected over any river in Scotland, or when so under repair, or within one thousand yards of the same, unless such timber, trees, logs, deals, or spars, shall be joined together in a raft or rafts, or being joined together in a raft or rafts, unless there shall be a person or persons therewith to manage and conduct the same; or if more than one raft shall be suffered to pass through any arch, or between the piers of any such bridge, at the same time, it shall and may be lawful for any person or persons concerned or employed in the building or repairing of such bridge, or any person or persons under their direction, to seize and detain such timber, trees, logs, deals, or spars, or such raft or rafts in the cases aforesaid, until the



said penalty shall be paid ; for which purpose an application shall forthwith be made to some one of his Majesty's justices of the peace for the county or stewardry where such detention shall take place, who shall thereupon direct such timber, trees, logs, deals, or spars, to be restored to the owner or owners thereof within fourteen days, unless such justice shall deem the said penalty to have been incurred ; and if such penalty shall not be paid within the space of fourteen days after such detention, it shall be lawful for such person or persons to apply to any justice of the peace of the county or stewardry where such detention shall take place, who shall issue his warrant to appraise and sell such timber, trees, logs, deals, or spars, or such raft or rafts so seized and detained in the cases aforesaid, by public auction at the place where such timber, trees, logs, deals, or spars, or such raft or rafts, in the cases aforesaid, shall have been detained, rendering the overplus of the price, if any, upon demand, to the owner or owners thereof, after deducting the said penalty and the reasonable charges attending such detention and distress and sale.

III. And be it further enacted, That if any person or persons shall hinder, obstruct or prevent any person or persons from seizing or detaining any such timber, trees, logs, deals, or spars, or any such raft or rafts, in the cases aforesaid, every such person or persons, upon being lawfully convicted thereof, shall forfeit a sum not exceeding ten pounds sterling to the use of the person or persons suing for the same, to be recovered by a summary application to any justice of the peace of the county or stewardry where the offence shall be committed, or where the offender shall be or reside, and to be levied by distress and sale of the offender's goods and effects by warrant under the hand of any such justice ; and if sufficient distress cannot be found, and the said penalty shall not be forthwith paid, it shall and may be lawful for any such justice to commit the offender

or offenders to the common gaol, there to remain for any time not exceeding three calendar months, unless the said penalty with reasonable charges shall be sooner paid.

IV. And be it enacted, That where any damage whatever shall be occasioned to any bridge whatever in Scotland by the floating or resting of timber as aforesaid, it shall and may be lawful for the procurator-fiscal for the county or stewartry wherein such bridge shall be situated, to sue for and recover the amount of such damage, by all lawful ways and means whatsoever, to the use of the person or persons by whom such damage shall have been suffered, or for the purpose of replacing the amount of the sum or sums of money expended in repairing such damage; and in every case where damages shall be recovered, there shall be awarded to such procurator-fiscal double costs of suit or expenses of process.

#### TURNPIKE ROADS.

Before the statute 4. of Geo. IV. *cap.* 49, was passed, the various statutes above detailed applied equally to turnpike and other roads. That statute, however, repeals the acts 1669, *cap.* 16,—1670, *cap.* 9,—1686, *cap.* 8,—5. of Geo. I. *cap.* 80,—11. of Geo. III. *cap.* 53,—and 12. of Geo. III. *cap.* 45, in so far as regards turnpike roads, and introduces general regulations for all the turnpike roads throughout Scotland. It does not however, affect the enactments 47. of Geo. III. sess. 1. c. 11. relative to certain roads in the county of Fife,—43. of Geo. III. *cap.* 80, and 59. of Geo. III. *cap.* 135, relative to certain roads and bridges in the

Highlands ; nor the local act 56. of Geo. III. *cap.* 83, relative to the road from Glasgow to Carlisle. The following is a summary of the several sections of this statute.

IV.—VIII. Trustees must take the oath under a penalty of L.20.

IX. Two trustees, or the clerk of the trustees, may call meetings.

X.—XIII. Trustees, at a general meeting, may name committees, clerks, collectors, and treasurers. Treasurers must give security before entering on their office. The treasurer and clerk must act separately, under the penalty of L.50.

XIV.—XVI. The accounts to be kept in a book, which shall be freely open to the inspection of trustees, and to others, on paying five shillings to the clerk.

XVII. The officers must render an account of disbursements : failing to do so, they may be imprisoned for a period not exceeding six months.

XVIII. The accounts to be audited annually.

XIX. Persons holding office under the trustees shall not sell wine, &c. except in the special case mentioned in this act.

XX.—XXVI. Trustees may borrow money : they are not personally liable : they may borrow from heirs of entail : they shall not give more than 10 *per cent.* on any sum to be borrowed by annuity, nor grant any annuity on any life under 50.

XXVII.—LV. Relate to the exaction of toll, and the regulations for all carts and carriages on the turnpike roads.

LVI.—LX. The trustees empowered to widen all turnpike roads to 20 feet, without any compensation ; or to extend them to 40 feet on making compensation. If the proprietors of lands or houses, required for this purpose, refuse to

treat with the trustees, the value of the property is to be ascertained by a jury summoned by the sheriff.

LXI.—LXV.—Relate to the manner of acquiring property, and substituting a new for an old road.

LXVI.—LXXI. Relate to the application of the compensation money.

LXXII.—LXXIII. Trustees may carry roads through ministers' glebes, on making addition to such glebes for the ground so taken.

LXXIV.—LXXVII. Regulations for the trustees in the formation of roads.

LXXIX.—LXXXVII. Rules as to foot-paths, ditches, and drains on the road-side.

LXXXVIII.—XCVII. Direction posts and mile-stones to be erected. Rules for prohibiting all nuisances, and pasturing animals.

XCVIII. Trustees shall erect parapets on the sides of bridges, &c.

XCIX. Where the offender cannot be discovered, the parishes shall pay the damage occasioned by accidents owing to the want of proper parapets.

C. There shall be no wind-mill, water-mill, lime-kiln, or skinner's washing pond within 100 yards of the road.

CI.—CIII. The owner's name shall be painted on each cart. One carter may drive two carts. No child under thirteen years of age shall drive a cart on a turnpike.

The remaining thirteen sections of the act relate to the manner of recovering the penalties.

This statute has been very distinctly commented on by Mr Tait, in his summary of the duties of justices of the peace, under the title "Highways." For this reason, the above outline seems sufficient.

Erskine, I. 4. 14.—Tait's Justice of Peace, p. 194.

## DECISIONS.

*Inhabitants of Sneddon v. Magistrates of Paisley*, 27. Feb. 1759.—*Justices of Peace of Fife v. Magistrates of Kinghorn*, 14. June 1762.—*Justices of Mid-Lothian and Fife v. Galloway and others*, 1. Aug. 1775.—*Wood v. Justices of Peace of Berwick*, 31. July 1761.—*Oswald and Waddell v. Lawrie and others*, 17. Feb. 1827.—*Justices of Peace of Clackmannan v. Magistrates of Stirling*, 5. Dec. 1772.—*Town of Burntisland v. Bruce*, 17. June 1742, *Elchies*.—*Tenants of Libberton v. Justices of Peace of Mid-Lothian*, 21. July 1724.—*Turner v. Duke of Roxburgh*, 14. June 1749.—*Napier v. Robison*, 7. Aug. 1782.—*Urie v. Stewart*, 25. June 1747.—*Walker and Herd v. Thomsons*, 17. Dec. 1760.—*Hamilton v. Inhabitants of Kirkaldy*, 24. July 1750, *Mor.* 13159.—*Trustees of Perth and Queensferry Turnpike v. Magistrates of Perth*, 1. Feb. 1757, affirmed on appeal, 10. April 1757, *Mor.* 13166.—*Trustees of Glasgow Turnpike v. Inhabitants of Paisley*, 11. Jan. 1758, *ib.* 13170.—*Mackay, &c.* 27. Nov. 1807, *ib.* Appendix, No. 2. *voce* “*Apprentice*.”—*Earl of Eglinton v. Justices of Ayr*, 7. March 1775.—*Justices of Peace, &c. of Berwick v. Tenants of Cockburnspath and Coldingham*, 4. Jan. 1757.

## STARR OR BENT.

Notice may here be taken of the statute 1695, *cap.* 30, being an act for preservation of meadows, lands and pasturage lying adjacent to sand-hills, which is in the following terms :

Our Sovereign Lord considering that many lands, meadows, and pasturages lying on the sea-coasts, have been ruin-

ed and overspread in many places of this kingdom by sand driven from adjacent sand-hills, the which has been mainly occasioned by the pulling up by the root of bent, juniper and broom bushes, which did loose and break the surface and scroof of the said hills; and particularly considering, that the barony of Cowbin, and house and yards thereof, lying within the sheriffdom of Elgin, is quite ruined and overspread with sand, the which was occasioned by the foresaid bad practice of pulling the bent and juniper: Therefore his Majesty, with advice and consent of the Estates of Parliament, for preventing of the like prejudices in time coming, does strictly prohibit and discharge the pulling of bent, broom, or juniper off sand-hills for hereafter, either by the proprietors themselves, or any other whatsoever, the same being the natural fences of the adjacent countries to the said hills; certifying such as shall contraveen this act, they shall not only be liable to the damages that shall therethrough ensue, but shall likewise be liable in the sum of ten pounds of penalty, the one-half thereof to belong to the informer, and the other half to the judge within whose jurisdiction the said contravention shall be committed.

This act was amended by the statute 15. of Geo. II. *cap.* 33, passed “to revive several acts for the punishment of persons destroying turnpikes or locks, and for other purposes therein mentioned, and for the more effectual preventing the cutting of starr or bent.” Of this latter statute, § 9. is in the following terms:

“And whereas, by an act made in Scotland in the year 1695, entituled, An act for preservation of meadows, &c. lying adjacent to sand-hills, the pulling of bent is prohibited and restrained under the penalties mentioned in the said act; and whereas the said act hath by experience been found ineffectual for answering the purposes thereby in-

“tended:” Be it therefore enacted, That if any bent shall be pulled or cut from any sand-hills in Scotland, either by the lord or owner thereof, or by any other person or persons whatsoever, such person or persons being convicted thereof shall be subject and liable to the like penalties and forfeitures, to be disposed of in such manner as in and by the said act is particularly mentioned and expressed; and if any bent, &c. shall be found in the custody or possession of any person or persons, within eight miles of any sand-hills in Scotland, such person or persons, being convicted thereof, shall be deemed, adjudged, and taken to be the puller or cutter of bent from such sand-hills, and shall be subject and liable as a puller of bent to the like penalties and forfeitures, to be disposed of in such manner as in and by the said act is particularly mentioned and expressed.

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## INCORPORATIONS.

To regulate the proceedings of certain public companies,—to give legal efficacy to these proceedings,—and to point out to the rest of the community how these incorporated societies may sue and be sued in a court of law, three statutes have been passed.

The statute 7. of Geo. III. *cap.* 48, “for regulating the proceedings of certain public companies and corporations carrying on trade or dealings with joint stocks, in respect to the declaring of dividends; and for further regulating the qualification of members for voting in their respective general courts,” is in these terms:

“ Whereas, by virtue of divers acts of Parliament, and of  
“ royal charters founded thereupon, certain public com-  
“ panies or corporations have been instituted for the purpose  
“ of carrying on particular trades or dealings with joint  
“ stocks; and the management of the affairs of such com-  
“ panies has been vested in their general courts, composed  
“ of the members at large of such companies respectively; in  
“ which general courts every member of each respective com-  
“ pany, possessed of such share in the stock of the company  
“ as in and by the said acts of Parliament and charters is  
“ limited with regard to each of the said companies respec-  
“ tively, is qualified and entitled to give a vote or votes:  
“ And whereas of late years a most unfair and mischievous  
“ practice has been introduced of splitting large quantities  
“ of stock, and making separate and temporary conveyances  
“ of the parts thereof, for the purpose of multiplying or ma-  
“ king occasional votes immediately before the time of de-  
“ claring a dividend, of choosing directors, or of deciding  
“ any other important question; which practice is subver-  
“ sive of every principle upon which the establishment of  
“ such general courts is founded, and, if suffered to become  
“ general, would leave the permanent interest of such com-  
“ panies liable at all times to be sacrificed to the partial and  
“ interested views of a few, and those perhaps temporary  
“ proprietors:” Be it therefore enacted, That from and af-  
ter the 1st day of August 1767, no member of any of the said  
public companies or corporations, instituted for the purpose  
aforesaid, shall be deemed qualified to vote, or be admitted  
to give any vote or votes, in any general court of any such  
company, in respect of any stock transferred to him, her, or  
them, after the said 1st day of August 1767, until he, she, or  
they shall have been possessed of such stock six calendar  
months; unless such stock shall have been acquired or shall  
have come by bequest, or by marriage, or by succession to  
an intestate’s estate, or by the custom of the city of London,



ship existing in Scotland at the time of passing this act shall be held to be legal from and after the passing thereof, and shall be recognised as such in all courts of law or equity (throughout his Majesty's dominions,) and in all transactions in which they have been engaged antecedent to the passing of this act, or subsequent thereto.

III. And be it further enacted, That this act shall endure for twelve months from the passing thereof.

IV. Providing always, and be it enacted, That nothing herein contained shall in any way affect any question which may be in dependence before any court of law in the passing of this act, but such question shall be dealt with in all respects in the same manner as if this act had not been passed.

And the act 7. of Geo. IV. *cap.* 67, "to regulate  
"the mode in which certain societies or copartnerships  
"for banking in Scotland may sue and be sued," is in  
these terms :

"I. Whereas the practice has prevailed in Scotland of  
"instituting societies possessing joint stocks, the shares of  
"which are either conditionally or unconditionally transfer-  
"able, for the purpose of carrying on the business of bank-  
"ing; and it is expedient that such society or copartner-  
"ship should be enabled to sue and be sued in the name of  
"its manager, cashier or other principal officer;" Be it there-  
fore enacted, That it shall and may be lawful for every such  
joint-stock society or copartnership, already established, or  
that may hereafter be established in Scotland for the pur-  
poses of banking, to sue and be sued in the name of the  
manager, cashier or other principal officer of such society  
or copartnership, provided that such joint-stock society or  
copartnership shall observe the regulations prescribed by  
this act.

II. And be it further enacted, That every such joint-stock  
society or copartnership already formed, shall, between the  
twenty-fifth day of May and the twenty-fifth day of July in

this and each succeeding year, and every such joint-stock society or copartnership hereafter to be formed shall, before such joint-stock society or copartnership shall begin to carry on business, and thereafter in each succeeding year, between the said twenty-fifth day of May and the twenty-fifth day of July, cause an account or return to be made out according to the form contained in the schedule marked (A) to this act annexed, wherein shall be set forth the true names, title or firm of such intended or existing society or copartnership, and also the names and places of abode of all the members of such society, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such society or copartnership, and the name or firm of every bank or banks established or to be established by such society or copartnership, and also the name and place of abode of the manager, cashier or other principal officer in the name of whom such society or copartnership shall sue and be sued, as herein-after provided, and also the name of every town and place where any of the bills or notes of such society or copartnership shall be issued by any such society or copartnership, or by their agent or agents; and every such account or return shall be delivered to the head collector of stamp-duties at the Stamp-office in Edinburgh, who shall cause the same to be filed and kept in the Stamp-office there, and an entry and registry thereof to be made in a book or books to be there kept for that purpose, and which book or books any person or persons shall from time to time have liberty to search and inspect, on payment of the sum of one shilling for every search.

III. And be it further enacted, That such account or return shall be made out by the officer named as aforesaid, and shall be verified by the oath of such officer taken before any justice of the peace, and which oath any justice of the peace is hereby authorised and empowered to administer;

and that such account or return shall, between the twenty-fifth day of May and the twenty-fifth day of July in every year, be in like manner delivered by such officer as aforesaid to the said collector, to be filed and kept in the manner, and for the purposes as herein-before mentioned.

IV. And be it further enacted, That a copy of any such account or return, so filed or kept and registered at the Stamp-office as by this act is directed, and which copy shall be certified to be a true copy, under the hand of the said collector, or of the comptroller of the stamp-duties at Edinburgh, shall in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as proof of the appointment and authority of the officer named in such account or return, and also of the fact that all persons named therein as members of such society or copartnership were members thereof at the date of such account or return.

V. And be it further enacted, That the said collector or comptroller for the time being shall, and he is hereby required, upon application made to him by any person or persons requiring a copy certified according to this act, of any such accounts or return as aforesaid, in order that the same may be produced in evidence, or for any other purpose, to deliver to the person or persons so applying for the same such certified copy, he, she or they paying for the same the sum of ten shillings and no more.

VI. Provided also and be it further enacted, That the manager or other officer of every such society or copartnership shall, and he is hereby required, from to time, as often as occasion shall render it necessary, make out upon oath, in manner herein-before directed, and cause to be delivered to the said collector as aforesaid, a further account or return, according to the form contained in the schedule marked (B.) to this act annexed, of the name of any person who shall have been nominated or appointed a new or additional officer of such society or copartnership, in whose name the same shall

sue and be sued, and also of the name or names of any person or persons who shall have ceased to be members of such society or copartnership, and also of the name or names of any person or persons who shall have become a member or members of such society or copartnership, either in addition to or in the place or stead of any former member or members thereof, and of the name or names of any new or additional town or towns, place or places, where such bills or notes are or are intended to be issued, and where the same are to be made payable; and such further accounts or returns shall, from time to time, be filed and kept, and entered and registered at the Stamp-office in Edinburgh, in like manner as is herein-before required with respect to the original or annual account or return herein-before directed to be made.

VII. And be it further enacted, That all actions and suits, and also all petitions to found any sequestration in Scotland, or commission of bankruptcy in England, against any person or persons who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any sequestration or commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership, against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts, or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may, from and after the passing of this act, be commenced or instituted and prosecuted in the name of the officer named as aforesaid, for the time being, of such copartnership, as the nominal pursuer, plaintiff or petitioner, for and on behalf of such copartnership; and that all actions or suits, and proceedings at law or in equity, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether

members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted and prosecuted against the officer named as aforesaid, for the time being, of such copartnership, as the nominal defender or defendant for and on behalf of such copartnership; and that all indictments, informations, and prosecutions by or on behalf of such copartnership, for any stealing or embezzlement of any money, goods, effects, bills, notes, securities, or other property of or belonging to such copartnership, or for any fraud, forgery, crime, or offence committed against, or with intent to injure or defraud such copartnership, may be had, preferred and carried on in the name of the officer named as aforesaid, for the time being of such copartnership; and that in all indictments and informations to be had or preferred by or on behalf of such copartnership against any person or persons whomsoever, it shall be lawful and sufficient to state the money, goods, effects, bills, notes, securities, or other property of such copartnership to be the money, goods, effects, bills, notes, securities, or other property of the officer named as aforesaid, for the time being, of such copartnership; and that any forgery, fraud, crime, or other offence committed against, or with intent to injure or defraud any such copartnership, shall and lawfully may in such indictment or indictments, notwithstanding as aforesaid, be laid or stated to have been committed against, or with intent to injure or defraud the officer named as aforesaid, for the time being, of such copartnership; and any offender or offenders may thereupon be lawfully convicted for any such forgery, fraud, crime, or offence; and that in all other allegations, indictments, informations, or other proceedings of any kind whatsoever, in which it otherwise might or would have been necessary to state the names of the persons composing such copartnership, it shall and may be lawful and sufficient to state the name of the officer named as aforesaid, for the time being, of such copartnership; and the

death, resignation, removal, or any act of such officer shall not abate or prejudice any such action, suit, indictment, information, prosecution, or other proceeding commenced against, or by or on behalf of such copartnership, but the same may be continued, prosecuted and carried on in the name of any other manager, cashier, or other principal officer of such copartnership for the time being.

VIII. And be it further enacted, That no person or persons, or body or bodies politic or corporate, having or claiming to have any demand upon or against any such society or copartnership, shall bring more than one action or suit, in case the merits shall have been tried in such action or suit, in respect of such demand; and the proceedings in any action or suit by or against the officer named as aforesaid, for the time being, of any such copartnership, may be pleaded in bar of any other action or actions, suit or suits, for the same demand, by or against such copartnership.

IX. And be it further enacted, That all or every decree or decrees, order or orders, interlocutor or interlocutors, made or pronounced in any suit or proceeding in any court of law or equity against the officer named, as aforesaid, of any such copartnership, carrying on business under the provisions of this act, shall have the like effect and operation upon and against the property and funds of such copartnership, and upon and against the persons and property of every or any member or members thereof, as if every or any such members of such copartnership were parties before the court to and in any such suit or proceeding; and such order, interlocutor, and decree, shall be enforced against every or any member of such copartnership, in like manner as if every such member of such copartnership was a party before such court to and in such suit or proceeding.

X. And be it further enacted, That all and every judgment and judgments, decree or decrees in any action, suit or proceedings in law or equity against the officer named, as

aforesaid, of any such copartnership, shall have the like effect and operation upon and against the property of such copartnership, and upon and against the property of every such member thereof as aforesaid, as if such judgment or judgments had been recovered or obtained against such copartnership; and that the bankruptcy, insolvency, or stopping payment of such officer for the time being of such copartnership, in his individual character or capacity, shall not be, nor be construed to be the bankruptcy, insolvency, or stopping payment of such copartnership; and that such copartnership, and every member thereof, and the capital stock and effects of such copartnership, and the effects of every member of such copartnership, shall, in all cases, notwithstanding the bankruptcy, insolvency, or stopping payment of any such officer, be attached and attachable, and be in all respects liable to the lawful claims and demands of the creditor and creditors of such copartnership, or of any member or members thereof, as if no such bankruptcy, insolvency, or stopping payment of such officer had happened or taken place.

XI. Provided always, and be it further enacted, That such officer in whose name any such suit or action shall have been commenced, prosecuted, or defended, and every person or persons against whom execution upon any judgment obtained or entered up as aforesaid in any such action, shall be issued as aforesaid, shall always be reimbursed, and fully indemnified for all loss, damages, costs, and charges which such officer or person may have incurred by reason of such execution, out of the funds of such copartnership, or in failure thereof, from the funds of the other members of such copartnership, as in the ordinary cases of copartnership.

XII. Provided always, and be it enacted, That nothing herein contained shall in any way affect any question which may be in dependence before any court of law at the passing

of this act; but such question shall be dealt with in all respects in the same manner as if this act had not been passed.

XIII. Provided always, and be it further enacted, That no such society or copartnership shall be obliged to take out more than four licenses for the issuing of any promissory-notes for money payable to the bearer on demand, allowed by law to be re-issued, in all, for any number of towns or places in Scotland; and in case any such society or copartnership shall issue such promissory-notes as aforesaid, by themselves or their agents, at more than four different towns or places in Scotland, then, after taking out three distinct licenses for three of such towns or places, such society or copartnership shall be entitled to have all the rest of such towns or places included in a fourth license.

XIV. And be it further enacted, That if any such society or copartnership carrying on the business of bankers under the authority of this act, shall issue any bills or notes, or borrow, or owe, or take up any money on their bills or notes, without having caused such account or return as aforesaid to be made out and delivered in the manner and form directed by this act, or shall neglect or omit to cause such account or return to be renewed yearly, and every year, between the days or times herein-before appointed for that purpose, such society or copartnership so offending shall, for each and every week they shall so neglect to make such account or return, forfeit the sum of five hundred pounds; and if any officer of such society or copartnership shall make out or sign any false account or return, or any account or return which shall not truly set forth all the several particulars by this act required to be contained or inserted in such account or return, the society or copartnership to which such officer so offending shall belong shall for every such offence forfeit the sum of five hundred pounds, and the said officer so offending shall also for every such offence forfeit the sum of one hundred pounds; and if any such officer



making out or signing any such account or return as aforesaid shall knowingly and wilfully make a false oath of or concerning any of the matters to be therein specified and set forth, every such officer so offending, and being thereof lawfully convicted, shall be subject and liable to such pains and penalties as by any law now in force persons convicted of wilful and corrupt perjury are subject and liable to.

XV. And be it further enacted, That all pecuniary penalties and forfeitures imposed by this act shall and may be sued for and recovered in his Majesty's Court of Exchequer at Edinburgh, in the same manner as penalties incurred under any act or acts relating to stamp-duties may be sued for and recovered in such court.



END OF THE FIRST VOLUME.

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